



## United States CFTC Issues No-Action letter to KalshiEX and Kalshi Klear for Transition in Clearing Operations

On 4 October 2024, the United States Commodity Futures Trading Commission issued a supplemental **no-action letter** in response to a request from KalshiEX LLC and Kalshi Klear LLC, which grants exemptions to Kalshi and its clearing organisations, specifically Kalshi Klear LLC and LedgerX LLC, regarding compliance with provisions of the United States Commodity Exchange Act and United States CFTC regulations. The relief provided in this letter is an extension of a previous no-action letter issued in 2021 and exempts changes in Kalshi's clearing operations, as the firm transitions from clearing contracts through LedgerX to Kalshi Klear LLC.

The no-action relief granted by the United States CFTC offers Kalshi and its clearing entities exemptions from various reporting and recordkeeping requirements under United States regulations, including those specified in United States CFTC Regulations 38.8(b), 38.10, 38.951, and 39.20(b)(2), as well as Parts 43 and 45 of the United States CFTC regulations. These regulations generally govern the swap data reporting and clearing requirements for designated contract markets (**DCMs**) and derivatives clearing organisations (**DCOs**). The Kalshi Contracts, which are binary options on the outcomes of specific events, are defined as "swaps" under the United States Dodd-Frank Wall Street Reform and Consumer Protection Act.

The background of this relief is tied to the United States CFTC's original no-action letter issued on 22 April 2021, which provided exemptions for Kalshi and LedgerX in relation to swap reporting and recordkeeping. However, following the registration of Kalshi Klear LLC as a DCO on 28 August 2024, Kalshi sought to amend the prior letter to reflect its new clearinghouse, allowing Kalshi to clear its contracts exclusively through Kalshi Klear LLC. This transition represents a shift in Kalshi's operations, with the company phasing out the use of LedgerX for clearing purposes.

In the request to the United States CFTC, Kalshi committed to specific operational safeguards, including that all contracts will be fully collateralized, transaction data will be promptly published on Kalshi's website, and necessary reporting will continue to be provided to the United States CFTC. Additionally, the no-action relief is subject to several conditions. These include maintaining full collateralization for all contracts, ensuring that no third-party clearing members are involved, and allowing the United States CFTC, the United States Department of Justice, and other regulatory bodies full access to Kalshi's records for inspection purposes.

This no-action letter from the United States CFTC provides Kalshi with regulatory flexibility as it shifts its clearing operations to Kalshi Klear LLC. It exempts Kalshi from compliance with certain regulatory obligations, provided that it adheres to the conditions outlined by the United States CFTC. However, the letter explicitly states that this relief does not constitute a legal determination regarding the underlying legality of the Kalshi Contracts and does not excuse Kalshi from compliance with other applicable provisions of the United States Commodity Exchange Act and related United States CFTC regulations.

(Source: <https://www.cftc.gov/csl/24-15/download>, <https://www.cftc.gov/PressRoom/PressReleases/8995-24>)

## Cumberland DRW LLC, Subsidiary of DRW Holdings, Faces United States SEC Enforcement Action for Alleged Unregistered Securities Trading

On 10 October 2024, the United States Securities and Exchange Commission sought to initiate legal proceedings against Cumberland DRW LLC, a crypto liquidity provider operating through its trading platform **Marea**. The **complaint**, filed in the United States District Court for the Northern District of Illinois, alleges that Cumberland has been engaging in the unregistered sale of securities in the form of crypto assets since at least March 2018. These actions, the United States SEC claims, constitute violations of Section 15(a) of the United States Securities Exchange Act of 1934. The SEC asserts that by trading billions of dollars worth of crypto assets as securities without registering as a securities dealer, Cumberland deprived investors of the protections afforded under United States securities laws, which are designed to ensure transparency, oversight, and accountability in the marketplace.

Cumberland DRW LLC, the firm at the centre of the United States SEC's allegations, is a Delaware-based limited liability company with its principal office in Chicago, Illinois. Originally operating under the name Cumberland Mining & Materials LLC prior to February 2019, the firm has since rebranded to Cumberland DRW LLC. It is a subsidiary of DRW Holdings, LLC (DRW Holdings), a well-known privately held financial services firm. DRW Holdings owns several registered broker-dealers that engage in various securities trading activities, spanning across numerous asset classes. Cumberland operates primarily through its online trading platform Marea. The platform allows Cumberland to trade crypto assets for its own account, providing price quotes and executing transactions with counterparties.

The United States SEC's complaint alleges that Cumberland's business model is based on capturing the spread i.e. difference between the buy and sell prices of these crypto assets, which have been classified as securities and thus require dealer registration to ensure compliance with federal regulations. Cumberland allegedly marketed and promoted its trading operations to counterparties through various channels and disseminated research reports and updates on the crypto market, allegedly marketing the investment potential of specific crypto assets. These promotional efforts, according to the United States SEC, allegedly solidified Cumberland's position as an unregistered dealer, as it encouraged counterparties to view crypto assets as securities and profit-generating investments based on the managerial efforts of the asset issuers.

The United States SEC identifies several specific crypto assets that Cumberland traded during the relevant period, including MATIC (Polygon), SOL (Solana), ATOM (Cosmos), ALGO (Algorand), and FIL (Filecoin) which meet the legal definition of securities under United States law. The United States SEC alleges that investors were led to expect profits based on the efforts of the promoters and developers behind these assets, which makes them investment contracts and, therefore, securities. By trading these assets, Cumberland is alleged to have acted as a dealer without registering with the United States SEC or qualifying for any exemptions under the United States Securities Exchange Act.

Throughout the period in question, Cumberland allegedly profited from its trading activities and generated more than \$400 million in revenue from its crypto trading business, while continuing to operate without proper registration.

Cumberland DRW LLC, for its alleged failure to register as a securities dealer while trading billions of dollars worth of crypto assets classified as securities has allegedly violated Section 15(a) of the United States Securities Exchange Act of 1934, and is accused of depriving investors of critical protections designed to ensure transparency, market fairness, and accountability.

United States SEC seeks a permanent injunction to prevent Cumberland from continuing to violate United States securities laws, which would legally restrain Cumberland from operating as an unregistered dealer, effectively halting its current business practices unless the firm complies with the necessary registration requirements. The United States SEC also demands disgorgement of all ill-gotten gains that Cumberland obtained through its alleged illegal activities and return profits earned through the sale of unregistered securities. US SEC also seeks prejudgment interest, which would compensate for the time value of the unlawfully earned profits from the time they were made until they are returned. The United States SEC further prays that the court impose civil monetary penalties on Cumberland under Section 21(d)(3) of the United States Securities Exchange Act.

Jorge G. Tenreiro, Acting Chief of the SEC's Crypto Assets and Cyber Unit (**CACU**) in his [statement](#) stated that: *"The federal securities laws require all dealers in all securities to register with the Commission, and those who operate in the crypto asset markets are no exception,"* he added *"Despite frequent protestations by the industry that sales of crypto assets are all akin to sales of commodities, our complaint alleges that Cumberland, the respective issuers, and objective investors treated the offer and sale of the crypto assets at issue in this case as investments in securities, and Cumberland profited from its dealer activity in these assets without providing investors and the market with the important protections afforded by registration."*

(Source: <https://www.sec.gov/newsroom/press-releases/2024-169>)

## Singapore's Joint Advisory Warns of Rise in Government Official Impersonation Scam Involving Banks

On 10 October 2024, the Singapore Police Force and the Monetary Authority of Singapore issued a joint advisory alerting the public to a surge in scams where perpetrators impersonate bank officers and government officials. The scam variant has seen at least 100 reported cases in September 2024, resulting in a total financial loss of \$6.7 million. The advisory also outlines the method and practices used by the scammers to educate the public and provide precautionary steps for the public to avoid falling victim to such scams.

The Singapore's advisory describes how victims fall for such scams. In a scam which begins with an unsolicited phone call to potential victims, and the scammer is impersonating a bank officer from major Singaporean banks, such as DBS, OCBC, UOB, or Standard Chartered Bank. The scammer typically claims that either suspicious activities or unauthorized transactions have been detected in the victim's bank account, prompting them to verify these transactions.

When the victim denies knowledge of these activities, the call is escalated to a second individual impersonating a government official, supposedly from either the Singapore Police Force or the Monetary Authority of Singapore. In some cases, this interaction occurs through a video call, with the scammer presenting themselves in a police or government setting, complete with fake uniforms, badges, and official-looking backgrounds. To make the scam more convincing, fake documents or warrants may be presented. The victim is then accused of involvement in criminal activities such as money laundering and instructed to transfer money to a designated "safety account" under the guise of aiding an investigation.

These scammers take advantage of victims' fear and confusion. As the victims are threatened with criminal accusations, they are pressured into transferring their funds to these so-called safety accounts. The scammers often move the communication to messaging platforms such as WhatsApp, where they continue to deceive their victims. The realization that they have been scammed typically only occurs when victims find that the scammers are no longer reachable or when they attempt to verify the status of their case with the banks or authorities.

The Singapore Police Force and the Monetary Authority of Singapore urges the public to adopt three critical steps:

1. Add security features such as International Call Blocking, Two-Factor Authentication (2FA), or Multifactor Authentication to secure accounts. Tools like Money Lock on bank accounts can help protect savings from unauthorized transactions.
2. Verify any suspicious activity by checking with trusted sources, including using tools like ScamShield to confirm the legitimacy of messages or phone numbers. Importantly, the advisory stresses that the police will never request a transfer of funds to a "safety account" at the start of an investigation.

3. Report the scam to the authorities, family, and friends. Victims should block suspected scam accounts, contact their bank immediately to stop fraudulent transactions, and file a police report.

The Singapore advisory emphasises and discussed the importance of community awareness in combating scams. It encourages the public to stay informed through official channels such as the ScamShield website and hotline, reminding everyone that working together is crucial to protecting the community from these crimes.

If anyone has information related to such scams, they are urged to contact the Police Hotline or submit an online report. Urgent police assistance can be sought by dialing '999'. The Singapore advisory claims that all information provided to aid and help the government authority to tackle such scams will be kept confidential, and resources will be made available for individuals to verify scam-related concerns.

(Source: <https://www.mas.gov.sg/news/media-releases/2024/joint-advisory-on-rise-in-government-official-impersonation-scam>)

## ASIC Publishes 2024 Licensing Reforms: Crypto Assets, BNPL Regulations, and Financial Accountability Among Key Changes

On 11 October 2024, the Australian Securities and Investments Commission (**ASIC**) published **Report 797**, titled Licensing and Professional Registration Activities: 2024 Update. The report outlines ASIC's licensing and registration activities over the 2023–24 financial year, providing insights for Australian Financial Services (**AFS**) licensees, credit licensees, auditors, service providers, and other professionals in the financial services sector.

This report also covers ASIC's performance in processing 1,531 licensing and registration applications from July 2023 to June 2024, marking a 2% increase from the previous year. ASIC finalised 874 AFS licence applications and 372 credit licence applications, reflecting slight decreases from the previous year. The report also discusses regulatory actions, including cancellations and suspensions of 239 AFS licences and 204 credit licences.

In addition to addressing general licensing trends, ASIC outlines several reforms and amendments set to impact the sector. A major reform is the introduction of a new AFS licensing portal scheduled for early 2025, designed to streamline application processes and improve user experience. ASIC also highlights proposed reforms related to the regulation of digital (crypto) assets, buy-now-pay-later (**BNPL**) services, and making advancements in payment systems, all of which may require new or additional licensing under ASIC's jurisdiction.

ASIC's performance during the period was largely in line with its service charter, meeting most targets in processing applications within prescribed timeframes. The report also outlines ASIC's approach to improving stakeholder engagement, with efforts to modernise professional registers and seek feedback through user surveys.

This paper proposed a regulatory framework aimed at addressing consumer risks in the crypto ecosystem while still promoting innovation. The reform seeks to define "digital asset facilities" as a new category of financial products under the Australian Financial Services (**AFS**) licensing regime. This change means that entities dealing in digital assets that meet the definition of a financial product will be required to apply for and hold an AFS licence or rely on available exemptions. ASIC also mentioned its intention to update Information Sheet 225 Crypto-assets (**INFO 225**), which provides guidance on when crypto-assets might be considered financial products and, therefore, subject to AFS licensing requirements to focus on consumer protection and ensure proper licensing of digital asset platforms.

The Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, currently before the Senate, proposes that BNPL providers will need to hold a credit licence under the National Credit Code. There is a regulatory shift for BNPL providers, who, under the proposed law, will be required to apply for and obtain a credit licence in order to continue offering BNPL services.

The reform includes transitional arrangements allowing BNPL providers to continue operating while their licence applications are processed, provided they submit their applications within the allowed timeframe. Once passed, this legislation will bring BNPL under the same regulatory scrutiny as other credit providers, ensuring higher consumer protection standards and compliance with credit laws.

In December 2023, Treasury published the Payments System Modernisation: Regulation of Payment Services Providers consultation paper. The proposed amendments and reform aims to bring many currently exempt payment service providers under the AFS licensing regime. The new rules will require these providers to apply for an AFS licence and comply with the relevant financial requirements.

The reform suggests that the AFS licensing requirement would take effect 18 months after the enabling legislation is passed, with transitional provisions allowing payment service providers to continue operating if they lodge a licence application within six months of the legislation's commencement.

This reform is relevant in the context of fintech innovations, as it broadens the regulatory framework to include more payment services, ensuring consistent oversight and consumer protection in the growing digital payments sector.

In October 2023, ASIC modified the reportable situations regime, which applies to AFS and credit licensees. The regime requires licensees to notify ASIC about certain reportable situations, including breaches of core obligations under the Corporations Act 2001 and the National Consumer Credit Protection Act 2009.

The reform, introduced through ASIC Corporations and Credit (Amendment) Instrument 2023/589, reduces the burden on licensees by removing the requirement to report specific breaches (e.g., those involving misleading or deceptive conduct). Furthermore, the notification period for certain situations was extended from 30 days to 90 days, giving licensees more time to report circumstances similar to previously reported issues. This change aims to streamline the reporting process and reduce unnecessary administrative burdens while maintaining regulatory oversight where needed.

The Financial Accountability Regime (**FAR**), which imposes responsibility and accountability frameworks on banking entities and their executives, will be extended to the insurance and superannuation sectors starting in March 2025. FAR was initially introduced for authorized deposit-taking institutions (**ADIs**) in March 2024 and is jointly administered by ASIC and the Australian Prudential Regulation Authority (**APRA**). Under FAR, executives in these industries will be required to comply with new standards of accountability, and both ASIC and APRA will be empowered to enforce these obligations. The reform aims to ensure stronger governance and accountability across the broader financial sector.

ASIC has introduced a new beta version of the Professional Registers Search, which provides users with a streamlined platform to verify the credentials and regulatory standing of various professionals. This tool allows for verification of AFS and credit licensees, authorized representatives, and registered company and SMSF auditors. The professional registers initiative represents a move toward greater transparency and accessibility, enabling the public and industry stakeholders to verify professional qualifications and regulatory status efficiently. This is part of ASIC's broader effort to modernize its digital infrastructure and improve stakeholder engagement.

From February 2024, amendments made by the Treasury Laws Amendment (2023 Measures No. 1) Act 2023 will require financial advisers providing personal advice to retail clients on relevant financial products to be registered with ASIC. This includes relevant providers, excluding provisional relevant providers. ASIC has published guidance through *Information Sheet 276 FAQs: Registration of Relevant Providers (INFO 276)* and *Information Sheet 277 Registration of Relevant Providers: Guidance on Making Declarations (INFO 277)*. These documents offer clarity on the new registration requirements and how licensees can comply. This reform is intended to enhance oversight of financial advisers, ensuring that those providing personal advice are properly registered and subject to ASIC's regulatory framework.

A revised regulatory regime for Foreign Financial Services Providers (**FFSPs**) was introduced in 2020, allowing them to apply for an AFS licence under a streamlined process. In 2023, the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 (**FFSP Bill**) was introduced to Parliament, proposing new exemptions from the AFS licensing requirements for FFSPs, including an exemption from the fit and proper person test. If passed, the new regime will take effect on 1 April 2025, with transitional relief extended until 31 March 2026. This reform offers flexibility for FFSPs operating in Australia, balancing regulatory requirements with international business needs.

(Source: <https://download.asic.gov.au/media/0cldbgeqi/rep797-published-11-october-2024.pdf>, <https://asic.gov.au/about-asic/news-centre/news-items/asic-issues-2023-24-update-on-licensing-and-professional-registration-activities/?altTemplate=betanewsroom>)

## Monochrome's Ethereum ETF Launches, Offering Australia's First Spot ETH Exposure

On 14 October 2024, Monochrome Asset Management launched Australia's first spot Ethereum exchange-traded fund (**ETF**), IETH, on Cboe Australia, marking a significant advancement in the nation's cryptocurrency investment landscape. The IETH ETF offers unique in-kind Ethereum subscriptions and tax efficiencies via a bare trust structure. The launch follows Monochrome's successful Bitcoin ETF (**IBTC**) debut in 2023, which has already garnered \$15 million in assets. Trading for IETH is set to begin on 14 October 2024.

This new ETF will allow investors direct exposure to Ethereum (**ETH**), providing a tax-efficient investment option. This launch builds on the success of Monochrome's Bitcoin ETF (**IBTC**), introduced in August 2023, which has amassed \$15 million in assets under management.

The IETH ETF has been designed with a unique structure. Unlike U.S.-based ETFs, it features in-kind subscriptions and redemptions, where investors can contribute or redeem Ethereum directly from the fund without triggering a capital gains tax event. This is made possible through its **bare trust** structure, a legal arrangement that allows investors to maintain both legal and beneficial ownership of the asset.

Monochrome's CEO, Jeff Yew, explained that the bare trust structure offers a tax advantage for long-term Ethereum holders. In traditional ETFs, investors face potential capital gains tax when transferring assets, but with a bare trust, investors can transfer their ETH into the fund without this shift in ownership. This structure allows the investment to be treated as if the investor still directly owns the Ethereum, making the ETF an attractive option for those looking to manage their tax liabilities more effectively.

Monochrome's Ethereum ETF stands out, especially compared to the U.S. crypto ETF market, which does not offer in-kind redemptions or subscriptions. In contrast to the growing demand for Bitcoin ETFs in the U.S.A, which saw inflows of US \$253.6 million as of 11 October 2024, Ethereum ETFs in the U.S. have seen modest outflows which indicates different market dynamics.

Despite the smaller scale of the Australian market compared to the U.S., Monochrome is optimistic about local demand for cryptocurrency investments. The company aims to attract investors shifting from crypto exchanges to ETFs, and those seeking secure custody solutions. Monochrome hopes to grow its presence by providing easy access to ETH investments through popular brokerage platforms.

Monochrome expects continued interest as the Australian crypto market evolves. The IETH ETF offers competitive fees, set at 0.5%, with a reduced rate of 0.21% for accredited advisors. This is in line with the U.S. market rates for similar products, which typically range between 0.20% and 0.25%. With its tax-efficient structure, competitive fees, and the ability to transfer Ethereum directly, IETH offers a unique investment vehicle for those seeking exposure to Ethereum in Australia's crypto investment market.

## Hong Kong's SFC Announces Appointment of Dr. Kelvin Wong Tin-yau as New Chairman

On 14 October 2024, the Hong Kong's Securities and Futures Commission (**HK SFC**) announced the appointment of Dr. Kelvin Wong Tin-yau as its new Chairman for a three-year term, starting on 20 October 2024. Dr. Wong will succeed Mr. Tim Lui, who will step down on 19 October 2024, after serving a successful six-year term. Dr. Wong brings a wealth of experience in financial regulations and capital market development to this leadership role. He is currently the Chairman of the Hong Kong's Accounting and Financial Reporting Council (**AFRC**), a body that collaborates closely with the HK SFC to ensure the high standards and integrity of Hong Kong's financial markets. He will continue in this AFRC position until 31 December 2024.

Dr. Wong is no stranger to the HK SFC. Between 2012 and 2018, he served as a Non-Executive Director of the Commission and also chaired the Investor Education Centre (now known as the Investor and Financial Education Council) from 2017 to 2018. His deep knowledge of the HK SFC's policy objectives, strategic priorities, and operational framework will be instrumental in his new role as Chairman.

In welcoming his successor, outgoing Chairman Mr. Tim Lui expressed confidence in Dr. Wong's ability to lead the HK SFC through the next phase of its journey. Mr. Lui highlighted Dr. Wong's vast expertise in capital markets and his close working relationship with the Commission through his previous roles. Mr. Lui reflected on his own six-year term as a time filled with both challenges and achievements, particularly during the unprecedented global disruptions caused by the Covid-19 pandemic and rising geopolitical tensions.

Mr. Lui's legacy is marked by the collective achievements of the HK SFC. His dedication to upholding market integrity, promoting transparency, and safeguarding investors' interests has left a lasting impact on the organization.

Dr. Wong, in his response to the appointment, expressed his honor at being named the new Chairman of the HK SFC. He emphasised the importance of maintaining the quality and integrity of Hong Kong's financial markets, noting that the HK SFC's core mission aligns with fostering a sustainable and vibrant capital market. Dr. Wong highlighted the need to protect investor interests while also advancing corporate governance and encouraging innovation within the financial sector.

He looks forward to working closely with the HK SFC's Board, CEO Julia Leung, and the broader management team, many of whom he had already collaborated with in his prior roles. Dr. Wong's vision includes building on the HK SFC's strong foundation, focusing on market development, and addressing emerging challenges in the global financial landscape.

The HK SFC's Chief Executive Officer, Ms. Julia Leung, welcomed Dr. Wong's appointment, expressing her gratitude for the leadership and guidance provided by Mr. Tim Lui during his six-year term. She noted that the SFC now has clear strategic priorities in place to continue its mission of ensuring market integrity and resilience. Ms. Leung looks forward to collaborating with Dr. Wong and the Board under his leadership, as the HK SFC continues to strengthen Hong Kong's position as a leading international financial center.

Dr. Wong's extensive career in financial regulation and governance has equipped him with a deep understanding of capital market dynamics. His work as Chairman of the Accounting and Financial Reporting Council has played a crucial role in maintaining the standards of corporate reporting in Hong Kong. His tenure as a Non-Executive Director of the HK SFC and his leadership at the Investor Education Centre have given him valuable insight into the Commission's operations, making him well-positioned to take on this new challenge.

(Source: <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?ref-No=24PR166>)

## US Court Orders Unsealing of US CFTC Case Against Traders Domain FX LTD, Making All Documents Public

On 11 October 2024, the United States District Court for the Southern District of Florida issued an **Order** related to Case No. 24-cv-23745-ALTMAN. This case involves the US Commodity Futures Trading Commission and Traders Domain FX LTD, among other defendants. The order granted a motion filed by the US CFTC to unseal the case, allowing the case file and all related docket entries to be made publicly accessible.

The US CFTC had previously filed a complaint against Traders Domain FX LTD and its affiliates, accusing them of fraudulent activities, including the misrepresentation of trading operations and misappropriation of customer funds. The case was initially sealed, meaning that the public could not access its details. On 11 October 2024, the court granted the US CFTC's motion to unseal the case, opening the documents and information within the case file for public viewing. The Order was signed by US District Judge Roy K. Altman.

On 30 September 2024, the US Commodity Futures Trading Commission filed a **complaint** in the US District Court for the Southern District of Florida against Traders Domain FX LTD and several associated individuals and entities. The complaint accuses the company and its affiliates of orchestrating a large-scale fraud involving false claims about their trading operations and the misappropriation of customer funds, including through cryptocurrency channels. The alleged scheme, which operated from November 2019, targeted US customers and failed to comply with US registration requirements. The US CFTC is seeking legal remedies such as injunctive relief, civil monetary penalties, and restitution for defrauded customers.

The fraudulent scheme involved Traders Domain FX LTD soliciting US customers to trade commodities such as gold (XAU/USD) through individual and pooled accounts. Customers were promised large profits, with claims of returns exceeding 5,000% in some cases. In reality, the company misled investors, recruited “sponsors” through a multi-level marketing (MLM) model, and ultimately diverted funds for unauthorized purposes. The company in August 2022 started delaying and denying customer withdrawals. Despite promises to resolve the issues, customers remain unable to access their funds, even after the company rebranded as Trubluefx in June 2023.

A major portion of the funds misappropriated by Traders Domain FX LTD was collected through cryptocurrency wallets. The defendants accepted deposits from customers via crypto wallets, giving the impression that these funds would be used for trading. However, much like the funds collected through traditional methods, these cryptocurrency deposits were misused. In October 2022, the company also partnered with a crypto payment processing firm based in Utah, which handled over US \$16 million in customer deposits. Despite these transactions, customers were still unable to withdraw their funds. The US CFTC revealed that the majority of these deposits, whether through crypto wallets or other means, were never traded as promised, further worsening the situation for defrauded investors.

The US Commodity Exchange Act (Section 4b(a)(2)) addresses fraudulent solicitations, which the defendants violated by falsely claiming that customer funds were being used for legitimate trading. Under US CFTC Rule 1.1, the defendants also violated laws against misappropriating customer funds, diverting these funds for personal gain and Ponzi-style payments. Moreover, the defendants failed to register with the US CFTC, violating US Section 6m of the Act, which mandates registration for entities operating commodity pools.

The US CFTC in its complaint is seeking injunctive relief to halt the defendants’ illegal actions, civil monetary penalties as punishment for their fraudulent activities, restitution to return misappropriated funds to defrauded customers, and other equitable relief such as bans on trading and the return of illegally gained profits.

A motion to unseal is a formal request made by a party, asking the court to make a previously confidential case public. This is typically done when the need for privacy no longer exists, and the court may grant or deny this motion based on the circumstances. The unsealing of cases relates to the principle of public access to court records, a right protected under the First Amendment. Courts generally strive for transparency unless there are compelling reasons to keep a case confidential.

The US CFTC filed a motion to unseal the case i.e. Motion ECF No. 11 with the court, requesting that the previously sealed case and its docket be opened to public view. On 11 October 2024, the court issued an order granting this motion and directed the Clerk of Court to unseal the case and its docket entries. The Clerk of Court is instructed to unseal the case and all its docket entries, meaning that the case is now publicly accessible. This includes the complaint, motions, and all other documents filed in the case. The unsealing likely signifies that the investigation or legal concerns that initially required confidentiality have been addressed, allowing the public to view the full details of the case.

(Source: <https://www.cftc.gov/PressRoom/PressReleases/8997-24>, <https://www.cftc.gov/media/11456/traders-domainfxcomplaint93024/download>, <https://www.cftc.gov/media/11451/enftradersdomainfxltdcorder101524/download>)

## MAS Updates on Settlement Periods, Safeguarding Customer Funds, and Scam Compensation Frameworks

On 15 October 2024, Mr Gan Kim Yong, Deputy Prime Minister and Chairman of the Monetary Authority of Singapore (MAS), provided written replies in Parliament addressing questions on funds collected by payment service providers and e-commerce platforms, as well as updates on the Shared Responsibility Framework (SRF) for phishing scams and compensatory frameworks for other scam types.

The first question, asked by Mr Chua Kheng Wee Louis, MP for Sengkang GRC, was:

“To ask the Prime Minister and Minister for Finance (a) with regard to funds collected by payment service providers and e-commerce platforms, whether current legislation restricts the settlement period to vendors and customers; and (b) whether current legislation requires customer funds to be separately managed for platforms with stored values.”



Mr Gan clarified that while e-commerce platforms are not regulated by MAS, those providing payment services under the Singapore's Payment Services Act 2019 must be licensed by MAS. Under the the Singapore's Payment Services Act 2019, licensed payment service providers must transmit customer funds to the intended beneficiaries within specified timeframes: three business days for domestic money transfers and seven business days for cross-border transfers. However, for merchants, the settlement period can be mutually agreed upon in writing, providing flexibility to suit industry practices.

Regarding the safeguarding of funds, licensed major payment institutions are required to safeguard customer monies by depositing them in a trust account with a safeguarding institution or obtaining a guarantee. The safeguarding must occur by the end of the next business day after receipt, or in the case of e-money, from the time the e-money is issued to the customer.

The second question, asked by Ms Sylvia Lim, MP for Aljunied GRC, was:

"To ask the Prime Minister and Minister for Finance (a) whether there are any updates on when the Shared Responsibility Framework for certain types of phishing scams will come into operation; and (b) whether there are any updates on a compensatory framework for other types of scams such as those perpetrated by malware fraud."

In response to the second question from Ms Sylvia Lim, MP for Aljunied GRC, regarding the Shared Responsibility Framework for phishing scams, Mr Gan confirmed that the SRF is expected to be implemented within the year. Public feedback is currently under review, and the Government will issue a formal response after careful consideration.

Mr Gan addressed the decrease in malware-enabled scams by the end of last year, following improvements to security measures that block access to banking apps if malware is detected on a customer's device. Banks have goodwill frameworks in place to support victims, particularly for new scam types like malware fraud when they first emerge. MAS expects banks to fairly assess whether they have fulfilled their obligations and whether the victim acted responsibly. Public education on cybersecurity remains a priority, with consumers urged to remain vigilant and practice good cyber hygiene.

(Source: <https://www.mas.gov.sg/news/parliamentary-replies/2024/written-reply-to-parliamentary-question-on-updates-to-srf>, <https://www.mas.gov.sg/news/parliamentary-replies/2024/written-reply-to-parliamentary-question-on-funds-collected-by-payment-service-providers>)

## U.S. SEC Charges Registered Representative for Fraud and Violations of US Regulation Best Interest

On 16 October 2024, the United States Securities and Exchange Commission filed a **complaint** against Baris Cabalar, a registered representative at PHX Financial, Inc., for recommending a short-term, high-volume trading strategy to eight retail customers without a reasonable basis for believing that the strategy would be profitable. The SEC alleges that from January 2019 through October 2021, Cabalar violated multiple provisions of United States securities law, including Section 17(a) of the United States Securities Act of 1933, Section 10(b) of the United States Securities Exchange Act of 1934, United States Rule 10b-5, and United States Regulation Best Interest (**Reg BI**) under United States Exchange Act Rule 15l-1.

According to the United States Securities and Exchange Commission's complaint, filed in the United States District Court for the Eastern District of New York, Cabalar, operating out of PHX Financial's Hauppauge, New York office, advised customers to engage in frequent, short-term trades, generating substantial commissions and fees. These recommendations were made without considering whether this strategy was suitable for his customers, leading to over US \$1 million in losses for the eight affected retail customers, while Cabalar and PHX Financial earned more than US \$400,000 in commissions and fees. Cabalar failed to disclose the high costs associated with this trading activity, which made it unlikely for the customers to achieve profits.

The SEC's complaint alleges that Cabalar made explicit misrepresentations to at least one customer. In one instance, Cabalar told a customer that he could help recover US \$70,000 in losses within a year, despite having no reasonable basis for such a claim, given the frequent trading strategy he recommended and the associated

costs. The customer had invested approximately US \$88,000 in his brokerage account and would have needed to generate nearly a 79% return just to break even, not including the substantial fees charged by Cabalar and PHX Financial.

Cabalar's actions allegedly violated United States' Regulation Best Interest (**Reg BI**), which came into effect on 30 June 2020. United States' Reg BI requires that financial professionals act in their customers' best interests when making investment recommendations. The United States' SEC alleges that Cabalar disregarded these obligations by placing his financial interests and those of PHX Financial ahead of his customers, recommending excessive trading even when it was not in the best interest of the retail customers.

The United States' SEC's complaint lays out the cost-to-equity ratios and turnover rates for each affected customer's account during the relevant period, showing high levels of trading activity that resulted in significant commissions for Cabalar but substantial financial losses for the customers. One customer had a turnover rate of 47.07, meaning their portfolio was completely bought and sold multiple times over the period. The cost-to-equity ratio, which reflects the cost of fees relative to the portfolio's value, was as high as 61.22% in some cases—an indicator of excessive trading.

The United States' SEC is seeking permanent injunctive relief to prevent Cabalar from engaging in similar conduct in the future, as well as disgorgement of all ill-gotten gains, with prejudgment interest, and the imposition of civil monetary penalties. The United States' SEC's New York Regional Office, which led the investigation, discussed the gravity of the misconduct, citing Cabalar's failure to meet even the most basic fiduciary standards required of financial professionals.

(Source: <https://www.sec.gov/files/litigation/complaints/2024/comp26161.pdf>, <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26161>)

## US CFTC Roundtable on Clearing Issues: Focus on Digital Assets and Market Evolution

On 16 October 2024, the United States Commodity Futures Trading Commission's Division of Clearing and Risk held a significant roundtable discussion to address existing, new, and emerging issues in the world of clearing, with a strong emphasis on digital assets. Held at the United States CFTC's headquarters in Washington, D.C., the roundtable brought together industry experts, regulators, and stakeholders to discuss the rapidly evolving landscape of derivatives and financial markets, particularly as it relates to digital assets and the challenges they pose.

The session opened with welcoming remarks from Clark Hutchison, Director of the United States CFTC's Division of Clearing and Risk. Pre-recorded messages from United States CFTC Chairman Rostin Behnam and Commissioners Summer Mersinger and Caroline D. Pham further set the tone for the discussions. Moderated by Gary DeWaal, former Senior Counsel and Chair of the Financial Markets and Regulatory Practice Group at Katten Muchin Rosenman LLP, the roundtable was structured into several modules, each addressing key topics that are pivotal to the future of clearing.

The first module tackled the custody and delivery of digital assets as well as their use as margin in derivatives trading. With digital assets like cryptocurrencies becoming a part of the financial system, stakeholders focused on the operational, legal, and regulatory hurdles associated with securely holding and transferring these assets. Digital asset custody has long been a point of contention in the industry, especially given the decentralized nature of these assets, and the session explored solutions to better protect investors while ensuring market integrity.

The use of digital assets as margin is another area undergoing rapid development. Many market participants see the potential for using cryptocurrencies as collateral in derivatives markets, but this poses risks related to volatility, liquidity, and regulatory oversight. The discussions highlighted the need for new safeguards and possibly redefined margin requirements that can account for the unique characteristics of digital assets.

Another issue explored and discussed during the roundtable was 24/7 trading. Unlike traditional financial markets, which typically operate within set trading hours, digital assets are traded around the clock, raising questions about how clearinghouses can manage risk in a continuously operating market. The discussions focused on how the traditional clearing infrastructure might need to evolve to handle the demands of 24/7 trading, particularly concerning liquidity management, margining, and real-time risk monitoring.

The third module addressed non-intermediated clearing, a concept that is gaining traction in the digital asset world. Non-intermediated clearing models, which bypass traditional brokers or clearing firms, offer the potential for more direct and efficient transactions. However, this also presents challenges regarding risk management, transparency, and regulatory oversight. The roundtable explored the potential for these new models and the regulatory gaps that may need to be addressed to ensure market safety and stability.

The final session of the day focused on conflicts of interest, concerning vertically integrated entities and their role in clearing operations. As digital asset exchanges, clearinghouses, and intermediaries become more intertwined, there is growing concern about the transparency and fairness of these entities. Stakeholders discussed the importance of clear guidelines to manage conflicts of interest and ensure that market participants are protected from potential abuses in a more vertically integrated clearing environment.

Digital asset analytics for digital assets continues to expand and hence requires the ability to analyze and interpret vast amounts of data related to these assets. Digital asset analytics provide insights into trading patterns, risk exposures, and market behaviors, all of which are essential for effective clearing and risk management. Participants at the roundtable discussed the need for clearinghouses to integrate sophisticated analytics tools to keep pace with the growing complexity of digital assets.

The Roundtable also focused on the shortcomings in the current regulatory framework discussing the concerns that the existing clearing infrastructure may not be fully equipped to handle the specific risks associated with digital assets, particularly in areas like custody, margin requirements, and 24/7 trading. There was also a call for more collaboration between regulators and market participants to address these challenges in a proactive manner, rather than waiting for a crisis to occur.

The roundtable discussions and the growing focus on digital assets could signal that something larger is on the horizon. As regulators grapple with the rapid evolution of digital assets and their unique challenges, there is speculation that new legislation might be in the works to fill the gaps in the current regulatory framework as complexities of digital assets, such as their decentralized nature, volatility, and continuous trading, pose unique risks that existing regulations were not designed to address. While there were no formal announcements of new legislation at the roundtable, the emphasis on digital assets and the detailed discussions suggest that regulators are keenly aware of the challenges ahead and are likely working behind the scenes on potential solutions.

(Source: <https://www.cftc.gov/PressRoom/PressReleases/8998-24>)

## ASIC Announces Key Appointments to Executive Leadership Team as Part of Ongoing Transformation

On 17 October 2024, the Australian Securities and Investments Commission (**ASIC**) has continued its significant transformation efforts and announced appointments to its senior executive leadership team. These appointments are said to be the ASIC's largest organisational redesign in 15 years, which is aimed at enhancing the agency's regulatory capabilities and improving its operational agility in a rapidly evolving financial landscape.

Peter Soros has been appointed as the Executive Director of Regulation and Supervision. Soros, who will begin his role in November, joins ASIC from AUSTRAC, Australia's financial intelligence and anti-money laundering regulator, where he has served as Deputy CEO for six years and briefly as Acting CEO. With over 20 years of experience in financial intelligence, regulation, and compliance, Soros will bring extensive expertise in overseeing regulatory operations. His role at ASIC will be crucial in shaping and overseeing supervision strategies as the regulator continues to confront new challenges in financial regulation.

Chris Savundra has been named the Executive Director of Enforcement and Compliance, effective 28 October 2024. Savundra, who currently holds the position of General Counsel and Executive Director of Legal Services at ASIC, has led some of ASIC's most significant and complex legal battles, including the high-profile Bank Bill Swap Rate litigation. With more than 25 years of legal experience, Savundra is expected to apply his extensive litigation and enforcement knowledge in leading ASIC's response to regulatory misconduct. Recruitment is already underway for his replacement as General Counsel.

Earlier in the year, ASIC appointed new executives including Diana Steicke as Executive Director of Registry and Intelligence, Joanne Harper as Executive Director of Data, Digital and Technology, and Annie Reeves as Chief People and Culture Transformation Officer. With seasoned professionals like Soros and Savundra at the helm,

ASIC is likely to take a more focused and strategic approach to its regulatory supervision and enforcement activities, especially in areas like anti-money laundering, financial crime prevention, and misconduct across various sectors. ASIC Chair Joe Longo expressed optimism about the future, stating that the cumulative effect of these leadership changes would help the agency better address the challenges and opportunities ahead. The ongoing transformation, according to Longo, is already delivering positive results for Australians, and these appointments are expected to further strengthen ASIC's ability to meet its regulatory responsibilities in a changing financial environment.

(Source: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-226mr-appointments-to-the-asic-executive-leadership-team/?altTemplate=betanewsroom>)

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