Kraken Operator Ordered to Pay AUD 8 Million for Regulatory Breaches Following ASIC Action

On 12 December 2024, the Australian Federal Court, in its judgment titled Australian Securities and Investments Commission v Bit Trade Pty Ltd *2024 FCA 1422*, ordered Bit Trade Pty Ltd, the Australian operator of the Kraken cryptocurrency exchange, to pay AUD 8 million in penalties. The decision followed legal proceedings initiated by the Australian Securities and Investments Commission (**ASIC**). The Court found that Bit Trade unlawfully issued a margin trading product to more than 1,100 retail clients without meeting critical regulatory obligations under the *Australian Corporations Act 2001* (**Cth**), as outlined in the judgment released by the Federal Court.

The ruling comes after ASIC alleged that Bit Trade failed to comply with the design and distribution obligations (**DDO**) when offering its "margin extension" product. This financial product allowed clients to borrow funds, either in national currencies like USD or digital assets such as Bitcoin, to trade on the Kraken exchange. The Federal Court found that Bit Trade breached its obligations by not preparing a Target Market Determination (**TMD**)—a mandatory document that ensures financial products are only marketed and distributed to suitable consumers.

ASIC further demonstrated that more than 1,100 Australian retail clients accessed the product from October 2021 to August 2023 and collectively incurred significant trading losses of USD 5.25 million (approximately AUD 8.2 million). The Court also noted that the company earned over USD 7.7 million (approximately AUD 12 million) in fees and interest during this period, despite failing to comply with the DDO regime.

Bit Trade, registered with AUSTRAC and operating as the Australian entity of Kraken, is a subsidiary of Payward Inc, one of the world's largest cryptocurrency exchanges. Payward acquired Bit Trade in 2020, transferring its margin trading operations to the Kraken platform in Australia. Following ASIC's investigation, the company was found to have inadequately assessed its legal obligations, relying on flawed legal advice regarding the DDO regime's applicability to credit facilities.

The violations stemmed from Bit Trade's decision to offer its margin extension product without a valid TMD following the implementation of the DDO regime in October 2021. The product enabled customers to borrow funds and amplify their trading positions, exposing them to heightened financial risk. In March 2022, ASIC began its investigation into Bit Trade, questioning the regulatory compliance of its margin products.

By August 2024, Justice Nicholas of the Australian Federal Court found that Bit Trade failed to consider its obligations under the *Corporations Act 2001*, even after ASIC intervention. The Court held that Bit Trade's compliance systems were severely deficient, describing its failures as a deliberate attempt to prioritise revenue over regulatory compliance.

The Court determined that Bit Trade breached the following provisions of the *Australian Corporations Act 2001* (**Cth**) namely, Section 994B(2), which deals with failure to produce a TMD before offering the margin extension product, Part 7.8A, which deals with breach of the design and distribution obligations, which require firms to design products that meet consumer needs and distribute them appropriately. Justice Nicholas noted that the margin product carried "a very high degree of financial risk," enabling clients to incur losses exceeding their initial investments. He criticised Bit Trade's disregard for compliance and remarked that the company "failed to turn its mind" to the DDO regime until ASIC intervened.

The Australian Federal Court imposed a penalty of AUD 8 million, higher than Bit Trade's proposal of AUD 4 million, but below the AUD 20 million sought by ASIC. Justice Nicholas explained that the penalty must act as a deterrent while remaining proportionate to the seriousness and duration of the breaches. The Court also ordered Bit Trade to cover ASIC's legal costs for the proceedings. Justice Nicholas also discussed in his judgment about the company's failure to establish a compliant Target Market Determination deprived retail clients of necessary safeguards, leading to significant financial losses.

This case marks the first penalty imposed under Australia's DDO regime for failing to prepare a TMD and sets a precedent for crypto firms operating in the Australian market. ASIC Chair Joe Longo elaborated on the importance of the decision, stating, "Target market determinations are fundamental in ensuring that investors are not inappropriately marketed products that could harm them. Bit Trade issued its margin extension product to over 1100 Australians who were charged fees and interest of more than US$7 million without considering if the product was appropriate for them. Those customers Bit Trade targeted suffered trading losses of more than US$5 million, including one investor who lost almost US$4 million. This is a significant outcome. It is ASIC's first penalty against an entity for failing to have a TMD and a reminder for digital assets firms to consider their regulatory compliance obligations. ASIC believes many products offered by digital assets firms are captured by the current law, which means those products need to be properly designed and marketed to the right consumers to ensure Australians receive appropriate protections."

(Source: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-274mr-kraken-crypto-exchange-operator-to-pay-8-million-following-asic-enforcement-action/?altTemplate=betanewsroom)

US SEC Orders Cantor Fitzgerald to Pay $6.75 Million for Misleading SPAC Disclosures

On 12 December 2024, the United States Securities and Exchange Commission imposed a cease and desist order against Cantor Fitzgerald, L.P., a global financial services firm, for causing materially misleading disclosures by two special purpose acquisition companies (**SPACs**) it controlled. The US SEC found that Cantor Fitzgerald misled investors about discussions with potential merger targets, violating federal securities laws. The firm has agreed to pay a $6.75 million civil penalty as part of a settlement.

Cantor Fitzgerald was charged with causing two SPACs, CF Finance Acquisition Corp. II (**CFAC II**) and CF Acquisition Corp. V (**CFAC V**), to deny substantive discussions with potential merger targets before their respective IPOs. The US SEC's investigation revealed that Cantor had indeed engaged in pre-IPO negotiations with potential targets, including View, Inc. and Satellogic Inc., which later became the merger partners of the SPACs.

These misleading statements, contained in public filings such as Form S-1 registrations, final prospectuses, and proxy statements, obscured the true extent of Cantor's involvement in pre-IPO negotiations.

Cantor Fitzgerald, a Delaware limited partnership headquartered in New York, is a global financial services firm with extensive involvement in SPAC sponsorship. Through its subsidiaries, Cantor has launched nine SPACs since 2018. Cantor controlled the activities of its SPACs, from identifying potential targets to executing agreements and filing regulatory disclosures.

The two SPACs involved in this case were CFAC II, which raised US$500 million in an IPO in August 2020, and CFAC V, which raised US$250 million in an IPO in January 2021. Both SPACs later merged with private companies i.e. CFAC II with View, Inc., and CFAC V with Satellogic Inc., after protracted discussions initiated before their respective IPOs.

In 2020, Cantor executives held pre-IPO discussions with View, Inc. about a potential merger through CFAC II. These talks included accessing View's data room, exchanging diligence materials, and holding multiple meetings. Despite this activity, CFAC II's IPO filings in August 2020 falsely stated that no substantive discussions with potential targets had occurred. CFAC II eventually announced its merger with View in November 2020, finalising the deal in March 2021.

Similarly, in late 2020 and early 2021, Cantor held substantive discussions with Satellogic Inc. and other targets on behalf of CFAC V before its IPO in January 2021. These discussions involved financial presentations, draft letters of intent, and direct negotiations about potential mergers. Yet, CFAC V's IPO filings denied any such pre-IPO activities. CFAC V later announced its merger with Satellogic in July 2021, completing the transaction in January 2022.

The US SEC found Cantor caused CFAC II and CFAC V to violate Sections 17(a)(2) and 17(a)(3) of the United States Securities Act of 1933, which prohibit obtaining money through false or misleading statements. Additionally, Cantor violated Section 14(a) of the United States Securities Exchange Act of 1934 and Rule 14a-3, which require accurate disclosures in proxy materials.

Without admitting or denying the findings, Cantor Fitzgerald agreed to cease further violations and pay a US$6.75 million civil penalty. The penalty may be distributed to affected investors if the US SEC decides to establish a Fair Fund. The investigation was conducted by US SEC officials Eugene Bull, Rebecca Schendel Norris, and Gargi Chaudhuri, and it was supervised by Laura B. Josephs.

(Source: https://www.sec.gov/files/litigation/admin/2024/33-11339.pdf, https://www.sec.gov/newsroom/press-releases/2024-199)

US SEC Announces Leadership Change as Erik Gerding Steps Down, Cicely LaMothe to Serve as Acting Director

On 13 December 2024, the United States Securities and Exchange Commission announced that Erik Gerding, Director of the Division of Corporation Finance, will step down from his role effective 31 December 2024. Washington. Cicely LaMothe, currently serving as Deputy Director of Disclosure Operations, has been named Acting Director upon Mr. Gerding's departure.

Mr. Gerding joined the US SEC in October 2021 as Deputy Director of the Division of Corporation Finance, focusing on Legal and Regulatory Policy. He became Director in February 2023, during which time he oversaw the implementation of several major regulatory initiatives. These included rules on climate-related disclosures, cybersecurity risk management, executive compensation, and conflicts of interest in securitizations. Under his leadership, the Division also finalised reforms such as universal proxy, updates to United States Rule 10b5-1 plans governing insider share sales, and standards for clawbacks of erroneously awarded compensation.

Reflecting on his tenure, Mr. Gerding said, *"I am so proud to have served alongside the talented staff of the Division and the Commission who worked devotedly to fulfill our statutory mandate during some the most dynamic changes in capital markets in decades, my thanks to the Chair and the Commission for the trust they have placed in me and the support they have shown to the Division. I am humbled to have been a part of what I view as the crown jewel of the agency."*

Before his time at the US SEC, Mr. Gerding had a career in academia and private practice. He was a Professor of Law and Wolf-Nichol Fellow at the University of Colorado Law School, specialising in securities and corporate law. He also taught at the University of New Mexico School of Law and practised at an international law firm, representing clients in the financial and technology sectors. Mr. Gerding holds a J.D. from Harvard Law School and an undergraduate degree from Duke University.

Cicely LaMothe, who will serve as Acting Director, has a background in securities regulation and leadership within the US SEC. She has held various senior roles, including Program Director of the Disclosure Review Program and Associate Director of Disclosure Operations. Recognised for her commitment to diversity and inclusion, Ms. LaMothe was awarded the Chairman's Award for Excellence in 2020 for her work with the US SEC Diversity Council. A Certified Public Accountant, Ms. LaMothe earned her bachelor's degree in accounting from Hampton University and previously worked in the private sector as a financial reporting manager and a senior associate at a national accounting firm.

In a statement, US SEC Chair Gary Gensler acknowledged Mr. Gerding's contributions during his tenure and stated: *"I want to thank Erik for his leadership of the Division of Corporation Finance, during his time of service, we've adopted important reforms regarding corporate governance to better promote trust in the markets. We've adopted important reforms to enhance investors' access to full, fair, and truthful information, a founding principle of our securities laws. I wish him very well in his next pursuits. I also want to thank Cicely for stepping up as Acting Director and for being a longstanding leader within the Division."*

(Source: https://www.sec.gov/newsroom/press-releases/2024-200)

US SEC Publishes Mandatory Electronic Filing and Website Disclosures for Financial Forms and Reports and Updates to FOCUS Reports

On 16 December 2024, the United States Securities and Exchange Commission (**US SEC**) published the final rules for Electronic Submission of Certain Materials Under the United States Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report which proposes amendments to require the electronic filing, submission, or posting of certain financial forms and materials under the United States Securities Exchange Act of 1934. The proposed rules updates the US SEC's data collection processes by mandating the use of the Electronic Data Gathering, Analysis, and Retrieval (**EDGAR**) system and adopting structured data formats where appropriate. The proposed rule changes apply to market participants, including SROs, registered clearing agencies, broker-dealers, over-the-counter (**OTC**) derivatives dealers, and security-based swap entities. The US SEC also published an accompanying fact sheet on 16 December 2024, which summarises the proposed changes. The proposed rule was initially published in the Federal Register on 22 March 2023, inviting comments by the stakeholders by 22 May 2023. The final rules are still to be published in the federal register.

The US SEC's amendments target forms, reports, and supplementary materials currently filed manually, via email, or through outdated formats. These updates include electronic filing for documents filed by SROs, broker-dealers, and security-based swap entities (**SBSDs and MSBSPs**). Additionally, certain supplementary materials and compliance reports would be required to be publicly posted on relevant organisations' websites.

Under the proposal, self-regulatory organisations (**SROs**) will be required to file forms such as Form 1, Form 1-N, Form 15A, and Form CA-1 electronically on EDGAR. The amendments also eliminate Form 19b-4(e) and require SROs to post information regarding new derivative securities products directly on their websites within two business days. Manual signature requirements for SRO filings would also be removed.

Registered clearing agencies will now need to post supplementary materials online, while broker-dealers and non-bank security-based swap dealers (**SBS entities**) will electronically file their annual audited reports and other forms, including Form 17-H, on EDGAR. Additionally, forms such as Rule 17a-19 notices, compliance reports under Rule 15fk-1(c)(2)(ii)(A), and withdrawal notices under Rule 3a71-3(d)(1)(vi) would also be required in digital format.

The amendments also include updates to the Financial and Operational Combined Uniform Single (**FOCUS**) Report, introducing harmonisation, clarifications, and technical corrections to streamline reporting for broker-dealers and OTC derivatives dealers.

The proposed rule amendments were initially introduced in March 2023 and made available for public comment, as required by the Federal Register process. These comments helped shape the final proposal, ensuring stakeholder input was considered before implementation.

The proposed amendments will take effect 60 days after publication in the Federal Register. However, specific compliance dates have been staggered across phases. For broker-dealers and SBS entities, annual audits and Form 17-H submissions will transition to EDGAR starting 30 June 2025. Structured data filing requirements for firms with significant capital thresholds will follow in 2026, with a full rollout by 2028.

For SROs, requirements to post information related to Rule 19b-4(e) filings will begin 1 September 2025, while updates to other forms will phase in between March 2026 and July 2026. Other notices and compliance filings, such as Rule 15fi-3(c) and Rule 15fk-1(c) reports, will become mandatory in structured data format starting 1 January 2026. The compliance dates for these amendments vary depending on the applicable form or rule but range from 60 days after the Final rule release is published in the Federal Register to on or after June 30, 2028.

US SEC Chair Gary Gensler stated: *"Today's amendments build on more than 20 years of Commission actions to modernize filing and recordkeeping requirements, I'm pleased that the Commission has taken the next step towards updating our requirements for the digital age."*

(Source: https://www.sec.gov/newsroom/press-releases/2024-202)

UK FCA Publishes Discussion Paper DP24/4 Seeking Feedback on Strengthening Transparency and Market Integrity in Crypto Markets

On 16 December 2024, the United Kingdom Financial Conduct Authority (**UK FCA**) released Discussion Paper DP24/4, presenting proposals to enhance transparency, market integrity, and consumer protection in the UK's crypto markets. These rules, if approved would apply to cryptoasset trading platforms, intermediaries, issuers, and other market participants operating in or targeting the UK market. The document invites industry feedback on plans to introduce admissions and disclosures (**A&D**) requirements for cryptoassets and implement a robust Market Abuse Regime for Cryptoassets (**MARC**). The UK FCA's discussion paper outlines measures to establish regulatory controls for cryptoasset admissions, disclosures, and market abuse prevention. It builds upon the UK government's earlier consultation in February 2023, which laid the foundation for including cryptoasset activities within the FCA's regulatory remit. The proposals certain areas for regulation, such as the admissions and disclosures regime (**A&D**) for cryptoassets entering trading platforms and a comprehensive Market Abuse Regime for Cryptoassets (**MARC**). Together, these measures aim to reduce financial crime, protect consumers, and ensure crypto markets operate transparently and fairly.

The proposed Admissions and Disclosures (**A&D**) Regime introduces stricter controls for cryptoassets admitted to trading on authorised cryptoasset trading platforms (**CATPs**). The proposals sought to mandate firms to produce comprehensive admission documents containing clear, accurate, and detailed information about a cryptoasset. These documents will include disclosures on key risks, technological specifications, and governance mechanisms to help consumers make informed decisions. Platforms will also be tasked with conducting due diligence on issuers and their cryptoassets, ensuring the information disclosed meets established standards.

Trading platforms will need to assess the risks of each cryptoasset and reject those that could result in significant consumer harm. To further promote transparency, platforms must publish their admission and rejection standards, providing investors with insights into the criteria used to assess new listings. Admission documents must be filed on the UK FCA's National Storage Mechanism (**NSM**) in a machine-readable format, such as XML or iXBRL, to improve accessibility and facilitate analysis.

The proposed Market Abuse Regime for Cryptoassets (**MARC**) introduces rules prohibiting insider dealing, market manipulation, and the unlawful disclosure of inside information, practices that are prevalent in unregulated crypto markets. Modelled on the existing UK Market Abuse Regulation (**UK MAR**), MARC seeks to mitigate risks such as fraudulent schemes, price manipulation, and unfair trading practices. Under these rules, issuers of cryptoassets will be responsible for disclosing inside information promptly and publicly.

For cryptoassets without an identifiable issuer, such as decentralised assets like Bitcoin, the responsibility for disclosure will fall to the trading platform or entity seeking admission. Platforms will also be encouraged to share information on suspected market abuse across markets, helping prevent fraud and manipulative activities. CATPs and intermediaries will be required to implement robust systems and controls to monitor trading activity and safeguard sensitive information.

These proposals form part of the UK government's broader plan to bring cryptoasset activities into the regulatory perimeter, as announced earlier in 2024. Moving away from a phased implementation, the government has committed to regulating all major cryptoasset activities simultaneously, including trading, custody, and stablecoins. The UK FCA's proposals are aimed to align with international standards set by organisations like the International Organization of Securities Commissions (**IOSCO**) and the Financial Stability Board (**FSB**), ensuring consistency with global best practices.

The feedback period for DP24/4 will close on 14 March 2025. The UK FCA will then assess the responses before proceeding with a formal consultation on detailed rules. Firms and stakeholders are encouraged to share their views via the UK FCA's official channels.

(Source: https://www.fca.org.uk/news/statements/fca-seeks-feedback-plans-improve-transparency-uks-crypto-markets)

UK FCA Publishes Consultation Paper on Private Stock Market PISCES to Transform UK Capital Access

On 17 December 2024, the United Kingdom Financial Conduct Authority (**UK FCA**) published a consultation paper CP24/29 on the establishment of the Private Intermittent Securities and Capital Exchange System (**PISCES**). This proposed private stock market aims to allow investors to trade shares in private companies. PISCES is designed to address the increasing demand for trading private company shares as more firms opt to remain private for extended periods. The proposals apply to private companies seeking to raise capital through share sales and to firms operating trading platforms within the PISCES framework which allows intermittent trading events and mandatory risk warnings for investors.

PISCES is aimed to bridge the gap between private and public markets, but it also raises important questions about regulatory oversight and market feasibility. While the initiative promises to unlock diversified investment opportunities, the risks inherent in private company trading require careful management. Unlike traditional stock markets, where regulatory standards are well-established, PISCES relies on a yet-to-be-finalised framework that could face challenges in balancing flexibility with investor protection. Stakeholders will need to address how intermittent trading events will manage liquidity constraints and whether the platform can sustain long-term confidence among participants.

The proposed PISCES framework introduces disclosure standards for private companies seeking to trade shares on the platform. Companies will be required to provide detailed financial information, including audited annual accounts where available, as well as material contracts and any ongoing legal or litigation risks. The disclosures will also encompass governance structures, highlighting the roles and responsibilities of board members and executives. To align with modern investment preferences, sustainability-related disclosures will be mandatory for firms claiming adherence to environmental, social, or governance (**ESG**) principles. Companies will need to report developments or event-driven updates, such as leadership changes or material transactions, to keep investors informed. The framework offers some flexibility, allowing companies to tailor additional disclosures to meet specific investor needs, such as sector-specific insights or unique business model details.

PISCES will operate through intermittent trading sessions rather than continuous trading. These trading events will be held periodically, potentially quarterly or biannually, and will allow shares to be bought and sold within a defined timeframe. This structure reduces the administrative burden on companies while ensuring sufficient market activity during trading periods. The sessions will also feature aggregated order books to ensure fair price discovery and preventing excessive volatility. Measures like price caps or volatility controls may be implemented to protect against manipulative practices, ensuring that the trading environment remains transparent and efficient.

To address the risks associated with investing in private companies, the PISCES framework proposes eligibility requirements for investors. Only sophisticated or high-net-worth individuals will be allowed to participate. Sophisticated investors must demonstrate experience in private equity markets or a deep understanding of the associated risks. High-net-worth individuals will need to meet financial thresholds, such as an annual income exceeding GBP 100,000 or net assets above GBP 250,000. PISCES platform operators will be responsible for verifying investor eligibility through review and checks.

Firms operating a PISCES platform will need to obtain authorisation from the UK FCA, demonstrating their capability to meet the system's compliance requirements including showcasing sufficient technological infrastructure, adequate financial stability, and a clear operational plan. Operators will also bear the responsibility of monitoring companies listed on their platforms to ensure adherence to disclosure standards. Active surveillance of trading activities will be mandatory to detect and prevent market manipulation, insider trading, or other forms of market abuse. Platform operators must establish a transparent dispute resolution system to address complaints effectively, especially those related to disclosure failures or irregular trading practices.

The UK FCA places emphasis on mitigating the risks of market abuse within the PISCES framework. To achieve this, platform operators must implement advanced market surveillance tools to monitor trading activities in real-time and detect unusual patterns or fraudulent behaviour. The framework also includes provisions for penalties and sanctions against entities found violating trading rules or failing to meet disclosure obligations.

Before its full implementation, PISCES will operate within a financial markets infrastructure (**FMI**) sandbox which will enable firms to test trading mechanisms, disclosure practices, and operational logistics under regulatory supervision. The sandbox period will provide the UK FCA and other stakeholders with insights to identify potential gaps in the framework. The UK FCA proposes requirements for transparency around pricing and fees associated with PISCES platforms. Platform operators will need to disclose all trading and listing fees, so that investors are fully aware of the costs involved. Any additional charges, such as administrative or operational fees, must also be clearly outlined.

Simon Walls, Interim Executive Director of Markets at the FCA, described PISCES as a potential game-changer, stating: *"Next year we will ring the bell on a new private stock market that could transform how private companies access funds and grow. It will offer investors more access and a greater confidence to invest in private companies and could act as a stepping stone to public markets for those firms. We want to work with industry and ensure we have the right building blocks in place to support investment in growing companies."*

Tulip Siddiq, Economic Secretary to the Treasury, added: *"PISCES will be an innovative new type of stock market for trading for private company shares and is a significant step forward in our reforms to capital markets. It will give investors the chance to get in on the ground floor of some of the most exciting companies and support the growth of those businesses. Today's consultation marks a significant step towards delivery of the new market next year and sits alongside our wider programme of reforms to boost competitiveness and investment. That includes the FCA's overhaul of the UK listing rules and the creation of pension megafunds which will unlock billions of pounds of potential investment in businesses."*

The UK Treasury plans to lay a statutory instrument before Parliament by May 2025 to establish the legal framework for PISCES. Following this, the UK FCA will finalise operational rules for platform operators, expected by mid-2025. A sandbox testing phase will run through the latter half of the year, allowing regulators and participants to identify and address any operational challenges. The full implementation of PISCES is anticipated by late 2025.

(Source: https://www.fca.org.uk/news/press-releases/fca-consults-new-private-stock-market, https://www.fca.org.uk/publication/consultation/cp24-29.pdf)

ASIC Sues Binance Australia Derivatives for Misclassifying Retail Clients and Consumer Protection Failures

On 18 December 2024, the Australian Securities and Investments Commission (**ASIC**) commenced civil proceedings in the Australian Federal Court against Oztures Trading Pty Ltd, trading as Binance Australia Derivatives, alleging significant breaches of consumer protection laws under the *Australian Corporations Act 2001* (**Cth**). ASIC claims Binance misclassified 505 retail clients as wholesale clients, denying them crucial consumer protections while exposing them to high-risk crypto derivative products. According to ASIC's Statement of Claim and Originating Process filed in the Federal Court, Binance's compliance systems failed to meet legal standards, leading to systemic misclassifications, inadequate disclosures, and substantial financial harm to clients. The case was filed in the Australian Federal Court's Victoria Registry under File Number VID1381/2024. While ASIC has initiated proceedings seeking civil penalties, declarations, and adverse publicity orders against Binance Australia Derivatives, the hearing date has not yet been scheduled.

Binance Australia Derivatives operated under an AFS licence until April 2023, when ASIC cancelled the licence at Binance's request following a targeted regulatory review. The entity is part of the global Binance Group, one of the world's largest cryptocurrency exchanges by trading volume, with operations spanning multiple jurisdictions.

ASIC alleges that between 7 July 2022 and 21 April 2023, Binance Australia Derivatives misclassified hundreds of Australian retail clients—representing 83% of its client base—as wholesale investors. This misclassification resulted in retail clients being excluded from key safeguards, including access to a Product Disclosure Statement (**PDS**), a Target Market Determination (**TMD**), and a compliant internal dispute resolution system.

ASIC alleges that Binance's internal compliance measures were fundamentally flawed, leaving clients exposed to complex and speculative crypto derivative products without proper disclosures. During this period, Binance's systems approved wholesale classifications in under five to ten minutes in some cases, raising concerns over inadequate due diligence.

ASIC's investigation found that Binance's failures caused significant financial harm to its Australian clients. In 2023, Binance paid approximately AUD 13.1 million in compensation to affected clients for aggregate losses incurred due to misclassification. ASIC's action aims to impose further accountability on Binance for failing to comply with its legal obligations and protect retail investors.

ASIC's case centres on breaches of multiple provisions of the *Australian Corporations Act 2001* (**Cth**), including, Section 1012B(3) which deals with failure to provide a Product Disclosure Statement to retail clients, Section 994B(1) which deals with failure to prepare and issue a Target Market Determination for the products offered, Section 912A(1)(a), which deals with failure to provide financial services efficiently, honestly, and fairly. Section 912A(1)(b), failure to maintain adequate compliance systems as required under its Australian Financial Services (AFS) licence, Section 912A(1)(f), which deals with failure to ensure employees were adequately trained and competent, Section 912A(1)(g), which deals with failure to implement a compliant internal dispute resolution system. These provisions are designed to ensure that AFS licence holders meet strict legal standards when providing financial services to retail clients, including protecting investors from undue risk and misconduct.

ASIC's action against Binance Australia comes amid broader regulatory scrutiny of the digital asset sector. In parallel, ASIC recently released *Consultation Paper 381* to clarify how existing financial product definitions apply to cryptoassets and related services under Australian law.

The case is now before the Australian Federal Court, with further directions and a hearing date expected to be set in early 2025. ASIC will pursue penalties, declarations of legal breaches, and adverse publicity orders to hold Binance accountable under Australian financial law.

(Source: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-283mr-asic-sues-crypto-company-binance-australia-derivatives-for-consumer-protection-failures/?altTemplate=betanewsroom)

HK SFC Licenses Four Virtual Asset Trading Platforms Under Streamlined Licensing Process & Issues Circular

On 18 December 2024, the Hong Kong Securities and Futures Commission (**HK SFC**) announced that it had granted licences to four virtual asset trading platforms (**VATPs**) under its streamlined licensing process. The process follows a comprehensive series of on-site inspections conducted since June 2024. The four newly virtual asset trading licensed platforms, Accumulus GBA Technology (Hongkong) Co. Limited, DFX Labs Company Limited, Hong Kong Digital Asset EX Limited, and Thousand Whales Technology (**BVI**) Limited, will initially operate under a restricted scope of business while completing mandatory rectifications and assessments as outlined in the SFC's newly published circular.

The streamlined licensing process as initiated by HK SFC mandates requirements such as rectifying issues identified during the HK SFC's inspections and conducting independent vulnerability assessments and penetration tests to ensure compliance with security and operational standards. The Hong Kong Securities and Futures Commission has introduced a multi-phase licensing process for virtual asset trading platforms (**VATPs**), designed to ensure robust regulatory compliance and operational security. The process involves a combination of restricted licensing, independent assessments, and phased evaluations to safeguard investor interests while fostering innovation in the virtual asset ecosystem.

Initially, newly licensed VATPs will operate under a restricted scope of business, which allows the platforms to continue functioning while addressing deficiencies identified during the HK SFC's risk-based inspections. These restrictions will remain in place until the platforms complete mandatory rectification actions. These actions are informed by the findings of the HK SFC's comprehensive on-site inspections conducted earlier this year.

As an important requirement of the licensing process, VATPs must conduct thorough vulnerability assessments and penetration tests. These tests are performed by independent third-party assessors and cover a range of systems, including network devices, servers, firewalls, databases, and digital wallet infrastructure. The objective is to identify and address potential security vulnerabilities, ensuring the platforms meet high standards of cybersecurity and operational resilience. Only platforms that achieve satisfactory results in these assessments can proceed to the next phase of licensing.

The second-phase assessment consists of evaluation of a VATP's operational and compliance systems. It is conducted under a tripartite agreement involving the HK SFC, the VATP, and an independent external assessor. The assessment focuses on the platform's policies, procedures, and systems, evaluating whether they are adequately designed and effectively implemented.

The process is structured as a direct assurance engagement, requiring certification from a public accountant to confirm compliance with the HK SFC's regulatory framework, including guidelines on Anti-Money Laundering and Counter-Financing of Terrorism (**AML/CFT**). The HK SFC supervises this phase closely, ensuring that all assessments meet the required standards. Completion of this phase to the SFC's satisfaction is a prerequisite for lifting the restrictions on the platform's operations.

Upon successful completion of the second-phase assessment, VATPs are granted unrestricted licences, allowing them to operate fully under the SFC's regulatory framework. Platforms with unrestricted licences can expand their service offerings and operate without scope limitations, provided they continue to adhere to the SFC's ongoing oversight and regulatory standards.

These measures apply to all VATPs seeking licences to operate in Hong Kong, whether they are deemed applicants under the transitional arrangements or new applicants entering the market.

The HK SFC has already issued a circular detailing the roadmap for licensing VATPs and providing additional guidance on the second-phase assessment. New applicants will benefit from updated procedural clarity in early 2025, with the full framework expected to mature throughout the year. The second-phase assessments for existing licensees are expected to conclude in mid-2025, with the unrestricted operations phase contingent on meeting SFC requirements during this period.

(Source: https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=24PR211, https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=24EC65)

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