
U.S. Government Brings Parallel Cases Alleging Insider Trading of Cryptocurrency

The U.S. Attorney's Office for the Southern District of New York ("SDNY") has brought the first-ever wire fraud charges against three individuals for insider trading of digital tokens on Coinbase, a cryptocurrency exchange platform.¹ In a parallel action against the same three individuals, the Securities and Exchange Commission ("SEC") brought a civil case in the U.S. District Court for the Western District of Washington alleging that the cryptocurrencies at issue are securities which were unlawfully traded based on material, nonpublic information.² Both actions could have sweeping implications in a rapidly evolving area of the law.

The SDNY indictment alleges that Ishan Wahi, a Coinbase employee involved in listing crypto assets on Coinbase's exchanges, leaked confidential business information to his brother, Nikhil Wahi, and his friend, Sameer Ramani. According to the indictment, Ishan told the other co-defendants about which assets Coinbase was planning to list and the timing of when those listings would be announced. A crypto asset typically increases in value after Coinbase announces its listing, so the information that Ishan shared with his co-defendants allegedly allowed them to strategically time their purchases of crypto assets shortly before Coinbase's public announcement of its listings. As a result of the charged scheme, Nikil Wahi and Sameer Ramani allegedly generated gains totaling approximately \$1.5 million. Ishan Wahi is charged with two counts and the other two defendants with one count of wire fraud and wire fraud conspiracy. Each count carries a maximum sentence of 20 years.

The SEC's complaint is based on the same core allegations as the SDNY indictment and seeks permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties. Unlike the SDNY indictment, which charges wire fraud but not securities fraud, the SEC has charged each defendant with violating Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934. Because the SEC is alleging securities fraud, it must establish that the crypto assets at issue constitute securities under the landmark case of *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946). A court decision in favor of the SEC would have far-reaching implications for digital assets given that the SEC has never before brought an action for insider trading involving a cryptocurrency.

These parallel cases are the latest in a string of novel actions by the government involving digital assets. Recently, the Department of Justice brought a case against Nathaniel Chastain for wire fraud and money laundering in connection with insider trading on OpenSea, an online marketplace for non-fungible tokens. While the SEC chose to charge the defendants in the *Wahi* case with securities fraud, SDNY did not. The SEC's decision prompted an unusual remark by a Commissioner of the Commodity Futures Trading Commission that the SEC's charges were "a

¹ Indictment, *United States v. Wahhi*, 22 Cr. 392 (S.D.N.Y. July 21, 2022).

² Complaint, *SEC v. Wahhi*, 22 Cv. 1009 (W.D. Wash. July 21, 2022).

striking example of regulation by enforcement.”³ To avoid regulatory risk, companies that have exposure to digital assets should take care to enforce strong insider trading policies and provide adequate training to their employees on the possible risks of insider trading for the entire firm.

* * *

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Bradley J. Bondi (partner) at 202.862.8910 or bbondi@cahill.com; Vitaliy Kats (associate) at 202.862.8932 or vkats@cahill.com; Kevin Snell (associate) at 202.862.8946 or ksnell@cahill.com; or e-mail publications@cahill.com.

³ *Statement of Commissioner Caroline D. Pham*, <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072122>

This memorandum is for general information purposes only and is not intended to advertise our services, solicit clients or represent our legal advice.