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SEC and Department of Justice Announce Parallel Crypto 'Insider Trading' Charges as Regulators and Congress Wrangle over Regulation of Digital Assets



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On July 21, the U.S. Securities and Exchange Commission (“SEC”) and the U.S. Attorney’s Office for the Southern District of New York announced parallel civil and criminal actions ([here](#) and [here](#)) against a former product manager at Coinbase Global, Inc. (“Coinbase”), the largest cryptocurrency exchange in the United States, as well as his brother and his friend, for an alleged scheme to trade ahead of announcements that certain crypto assets would be “listed” on the exchange. The U.S. Attorney’s Office charged the defendants with a criminal wire fraud conspiracy and wire fraud, while the SEC alleged the insider trading scheme constituted securities fraud in violation of the Securities Exchange Act and Rule 10b-5.

Notably, the civil case filed by the SEC is its first enforcement action for insider trading of a “crypto asset security.” (As used in the SEC’s complaint, “crypto asset security” refers to “an asset that is issued and/or transferred using distributed ledger or blockchain technology – including, but not limited to, so-called ‘digital assets,’ ‘virtual currencies,’ ‘coins,’ and ‘tokens’ – and that meets the definition of ‘security’ under the federal securities laws.”) The SEC specifically alleged that the defendants traded in at least 25 crypto assets ahead of more than ten listing announcements, and that nine of the 25 crypto assets were securities.

The criminal case, for its part, closely resembles the “first ever” digital asset insider trading case recently [announced](#) by the U.S. Attorney’s Office on June 1, 2022. There, the U.S. Attorney’s Office charged a former product manager at OpenSea, the largest online marketplace for the purchase and sale of non-fungible tokens (“NFTs”), with wire fraud and money laundering in connection with an alleged scheme to personally trade NFTs ahead of announcements that they would be featured on OpenSea’s homepage. These cases do not require that the digital assets meet the definition of “security” under federal securities laws.

