

SEC accuses Coinbase cryptocurrency exchange of breaking US regulations

Publication Date: 2023-06-06

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Section: Technology

Tags: Cryptocurrencies, E-commerce, Internet, Securities and Exchange Commission, Regulators, Stock markets, news

Article URL: <https://www.theguardian.com/technology/2023/jun/06/sec-accuses-coinbase-cryptocurrency-exchange-of-breaking-us-regulations>



The US Securities and Exchange Commission has sued Coinbase, the largest American cryptocurrency exchange, for operating as an “unregistered broker, exchange and clearing agency” in violation of US securities regulations. The lawsuit follows a similar action against Binance, the world’s largest cryptocurrency exchange, launched by the regulator on Monday. “Since at least 2019, through the Coinbase platform, Coinbase has operated as an unregistered broker ... an unregistered exchange ... and an unregistered clearing agency,” the SEC said in its complaint. It added: “By collapsing these functions into a single platform and failing to register with the SEC as to any of the three functions, and not having qualified for any applicable exemptions from registration, Coinbase has for years defied the regulatory structures and evaded the disclosure requirements that Congress and the SEC have constructed for the protection of the national securities markets and investors.” Paul Grewal, the chief legal officer and general counsel of Coinbase, said: “The SEC’s reliance on an enforcement-only approach in the absence of clear rules for the digital asset industry is hurting America’s economic competitiveness and companies like Coinbase that have a demonstrated commitment to compliance. “The solution is legislation that allows fair rules for the road to be developed transparently and applied equally, not litigation. In the meantime, we’ll continue to operate our business as usual.” The regulator’s main case relies on an argument that the crypto tokens that Coinbase trades are fundamentally securities, the trade of which is strictly regulated under US law. But it also attacks a specific Coinbase product for being directly in breach of securities regulations: the company’s “staking-as-a-service” program, “which allows customers to earn profits from the “proof of stake” mechanisms of certain blockchains and Coinbase’s efforts”, is a direct security in its own right, the SEC argues. At root is the application of the Howey test, a standard in US law for determining whether or not something is regulated security. The test, from a 1946 court case, defines a security as “a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party”. In its complaint, the SEC says that “while paying lip service to its desire to comply with applicable laws, Coinbase has for years made available for trading crypto assets that are investment contracts under the Howey test and well-established principles of the federal securities laws”. On Monday, the SEC launched a similar case against Binance, accusing it of mixing “billions of dollars” and secretly sending them to a separate company, while deliberately subverting its own controls to allow US investors to trade on the unregulated international website. Previously the SEC and Coinbase had a close working relationship. The crypto exchange set out to contrast itself from competitors by working

with regulators, rather than trying to fight or evade them. In recent years, that relationship has frozen over, and in April Coinbase sued the SEC to try to force the regulator explicitly to legalise crypto securities.