

[Securities Regulation Daily Wrap Up, BLOCKCHAIN—S.D.N.Y.: Law firm announces 11 suits against blockchain trading platforms, \(Apr. 7, 2020\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By [Mark S. Nelson, J.D.](#)

The common themes tying all 11 complaints together include allegations of unregistered sales of securities and controlling person liability for those sales.

New law firm Roche Cyrulnik Freedman, LLP, whose core of attorneys [broke away](#) from Boies Schiller Flexner, recently filed 11 lawsuits against blockchain trading platforms alleging that these companies violated federal and state securities laws by, among other things, facilitating the sale of unregistered securities tokens. The suit filed against Binance is typical of the other suits. However, the suit filed against HDR Global Trading Limited is an outlier for its inclusion of manipulation counts under the Commodity Exchange Act (CEA) ([Lee v. Binance](#), April 3, 2020).

Philippe Selendy, a lead partner for the lawsuits, emphasized in a [press release](#) how he believed investors had been misled: "Not unlike the mortgage crisis that led to the Great Recession, the alleged pattern of misconduct by exchanges and issuers yielded billions in profits for wrongdoers through a basic betrayal of public trust. The lawsuits we filed seek to restore integrity and transparency to these new financial markets."

The Binance complaint. Roche Cyrulnik, on behalf of two individual plaintiffs, sued Binance in a 7 count complaint alleging that Binance violated federal and state securities laws. The gravamen of the complaint was that Binance, like the other 10 companies sued, sought to persuade investors with claims that the tokens offered on the platform had utility and, thus, were not securities. The complaint seeks payment for tokens purchased by the plaintiff class plus fees the plaintiffs paid to Binance. According to the complaint, Binance is the "largest cryptocurrency exchange in the world."

The complaint emphasized that a reasonable investor would not have known that Ethereum ERC-20 tokens were securities before the SEC staff on April 3, 2019 issued a "[Framework](#)" for evaluating the securities status of tokens (as an aside, the Binance complaint indicates it was filed on the anniversary of the issuance of the SEC's Framework). The complaint, however, did not appear to note the prior SEC commentary on tokens contained in the DAO Report, issued July 25, 2017. The DAO Report left many questions about tokens unanswered but it did set forth basic analysis for evaluating when a token is a security under the Supreme Court's *Howey* test.

The Binance complaint evaluated ERC-20 tokens under *Howey*, while frequently citing portions of the SEC's Framework, especially regarding whether there was a common enterprise and whether investors relied on the managerial efforts of others. The Binance complaint then applied *Howey* to each of the 12 tokens the plaintiffs said were unregistered securities sold via Binance. In one instance, the complaint sought to bolster its analysis by noting that sales of the EOS token by Block.one (another of the companies Roche Cyrulnik sued on behalf of plaintiffs) had been [ordered](#) by the SEC to pay a fine of \$24 million for selling unregistered securities.

As a result, the suit against Binance alleged the following violations:

- Unregistered offers and sales of Securities under Securities Act Sections 5 and 12(a)(1).
- Contracts with an unregistered exchange under Exchange Act Sections 5 and 29(b).
- Unregistered broker-dealer violations under Exchange Act Sections 15(a)(1) and 29(b) of the Exchange Act.
- Control Person Liability against three individual defendants under Exchange Act Section 20 and related claims under Securities Act Sections 5 and 12(a)(1).

- Unregistered offers and sales of Securities and, with respect to the individual defendants, control person liability, under Texas law.

Common themes. The 11 separate suits allege some common themes. For one, the suits were brought on behalf of a total of four individual plaintiffs who sometimes are named together and sometimes singly. Second, most of the suits allege violations of federal and state law for offers and sales of unregistered securities by the companies named and control person liability regarding the individual defendants in each of the suits. With respect to state securities laws, the complaints alleged violations of Texas, New Jersey, and Illinois laws, sometimes alleging violations of just one state's laws, but sometimes alleging violations of multiple states' laws. The complaint against [HDR Global Trading Limited](#) is somewhat of an outlier in that it also alleged violations of the CEA. Specifically, the complaint alleged violations of CEA Sections 6 and 22 regarding market manipulation, principal-agent liability under the CEA, and that the individual defendants aided and abetted such violations. The complaint also contained claims regarding related Exchange Act violations.

The case is [No. 20-cv-02803](#).

Attorneys: Edward John Normand (Roche Cyrulnik Freedman, LLP) and Jordan Ari Goldstein (Selendy & Gay PLLC) for Eric Lee and Chase Williams. (Boies Schiller Flexner).

Companies: Binance; Block.one; Status Research & Development GmbH; Quantstamp, Inc.; KayDex Pte. Ltd.; Civic Technologies, Inc.; BProtocol Foundation; Bibox Group Holdings Limited; KuCoin; HDR Global Trading Limited; TRON Foundation

LitigationEnforcement: Blockchain CommodityFutures FedTracker Securities FraudManipulation GCNNews NewLawsuitsNews NewYorkNews