

## **Securities Regulation Daily Wrap Up, BLOCKCHAIN—W.D. Wash.: SEC charges crypto platform Bittrex, ex-CEO, with operating an unregistered exchange, (Apr 17, 2023)**

By Suzanne Cosgrove

From 2017 through 2022, Bittrex earned at least \$1.3 billion in revenues, including transaction fees from investors, the SEC said, serving as a broker, exchange and clearing agency.

In a complaint filed Monday in Seattle with the U.S. District Court Western District of Washington, the SEC charged crypto asset trading platform Bittrex, Inc. and its co-founder and former CEO, William Shihara, with operating an unregistered national securities exchange, broker and clearing agency. The Commission also charged Bittrex's foreign affiliate, Bittrex Global GmbH, for failing to register as a national securities exchange, noting it acted in concert with the Bittrex platform ([SEC v. Bittrex, Inc.](#), April 17, 2023).

The SEC charged that since at least 2014, the online Bittrex Platform facilitated buying and selling of crypto assets that were offered and sold as securities without registering any of its activities with the Commission. On its website, Bittrex described the Bittrex Platform as a “crypto exchange for the future,” which made hundreds of crypto assets available for trading. Shihara was the CEO of Bittrex from 2014 to 2019 and co-founded the company, along with Richie Lai and Rami Kawach.

In the 56-page filing, the Commission stated that Seattle-based Bittrex, which was once one of the largest cryptocurrency platforms in the U.S., made “calculated business decisions” to make assets available on its platform in order to increase its own revenues, which were primarily based on trading fees from customers, while explicitly acknowledging that its conduct could invite scrutiny.

“Today’s action, yet again, makes plain that the crypto markets suffer from a lack of regulatory compliance, not a lack of regulatory clarity,” said SEC Chairman Gary Gensler in [a press release](#). “As alleged in our complaint, Bittrex and issuers that it worked with knew the rules that applied to them but went to great lengths to evade them by directing issuer-applicants to ‘scrub’ offering materials of information indicating that certain crypto assets were securities,” he said. “Cosmetic alterations did nothing to change the underlying economic realities of the offerings and Bittrex’s conduct.”

“**Problematic statements.**” Specifically, the complaint alleged that Bittrex and Shihara coordinated with issuers who wanted to have their crypto assets made available for trading on Bittrex’s platform, telling them that before making an offering, they should first delete from public channels “problematic statements” that Shihara believed would lead market regulators to investigate the crypto asset as a security. Scrubbed terms included “price prediction[s],” “expectation of profit” and other “investment related terms.”

“We allege that Bittrex repeatedly chose profits over investor protection,” said Gurbir Grewal, director of the SEC’s Division of Enforcement. “Bittrex’s business model was based on three things: circumventing the registration requirements of the federal securities laws; counseling issuers of crypto asset securities to do the same by altering their offering materials; and combining multiple market intermediary functions under one roof to maximize profits,” Grewal said.

**A triplet of ‘should haves.’** The SEC’s complaint alleged that Bittrex and Bittrex Global should have registered as an exchange because they brought together, using a shared order book, the orders for securities of multiple buyers and sellers using established, non-discretionary methods under which the orders interacted, and the buyers and sellers entering the orders agreed to the terms of the trades.

In addition, the Commission stated Bittrex should have registered as a clearing agency because it acted as an intermediary in making payments and deliveries upon matching sell and buy orders and maintained custody of customer assets. Finally, the complaint alleged that Bittrex should have registered as a broker because it regularly engaged in the business of effecting transactions for the accounts of others in crypto assets that were offered and sold as securities.

“Today’s action not only holds Bittrex accountable for misconduct that we allege put investors at risk but should also send a message to other non-compliant crypto market intermediaries to follow the federal securities laws or be held accountable for their violations,” Grewal said.

**U.S. operations moved.** As noted in the SEC court filing, Bittrex announced on March 31 that it would wind down its operations in the U.S., effective April 30, 2023. As part of that process, customers were permitted to trade crypto assets, including crypto asset securities, through April 14, 2023, and will be allowed to withdraw fiat funds and crypto assets, including crypto asset securities, through April 27, 2023, and April 29, 2023, respectively.

In a [press release](#) issued Monday after the SEC filing, Bittrex Global referenced the March announcement as well as a Wells notice received last month from the Commission, stating that “Bittrex U.S. -- which operated in the U.S. until it announced in March 2023 that it was winding down operations citing regulatory uncertainty -- was and is legally and operationally distinct from Bittrex Global.”

In a blog post on [bittrex.com](#), co-founder Richie Lai said, “Operating in the U.S. is no longer feasible and Bill, Rami and I will focus on helping Bittrex Global succeed outside the U.S.”

Last week the SEC reopened a comment period and provided supplemental information on proposed amendments to the definition of “exchange” under Exchange Act Rule 3b-16.

At an open Commission meeting held Friday to consider the reopening, [Gensler said](#) the supplemental release would help address prior comments from market participants, particularly those in the crypto markets. “Given how crypto trading platforms operate, many of them currently are exchanges, regardless of the reopening release,” Gensler said.

The case is [No. 2:23-cv-00580](#).

Attorney: Ben Ninan Kuruvilla for the SEC.

Companies: Bittrex, Inc.; Bittrex Global GmbH

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