

## **Securities Regulation Daily Wrap Up, BLOCKCHAIN—D.D.C.: Court orders SEC and Binance to mediate contentious TRO dispute, (Jun 14, 2023)**

By [Lene Powell, J.D.](#)

The parties are negotiating over how to keep customer assets safe while the SEC's enforcement action against Binance plays out.

In the SEC's landmark enforcement action against crypto giant Binance, Judge Amy Berman Jackson has ordered the parties to mediation over the Binance entities' vehement opposition to the SEC's motion for a temporary restraining order (TRO) and asset freeze. The court aims to allay the SEC's significant concerns about the safety of customer assets via an interim consent order that would remain in force pending the resolution of the case on the merits ([SEC v. \*Binance Holdings Limited\*](#), June 13, 2023, Berman, A.).



The SEC has filed revisions indicating what changes need to be made for the Binance proposed order to be acceptable to the SEC.

**SEC motion for TRO.** The SEC [filed a motion for TRO and asset freeze](#) to ensure that Binance U.S. customer assets are protected and remain in the United States while the SEC pursues its litigation. The SEC previously [charged](#) the Binance entities and CEO Changpeng Zhao with critical securities law violations, including commingling customer assets, engaging in manipulative trading, and registration-related violations.

The SEC says a TRO is necessary to prevent dissipation of assets. According to the SEC, BAM Trading has repeatedly failed to provide sufficient assurances that \$2.2 billion in crypto assets and hundreds of millions in fiat currency belonging to Binance.US customers are custodied in the U.S. and under the exclusive control of BAM Trading.

The SEC is concerned that Binance Holdings and Zhao have formed a secret plan to create a new platform to feign compliance with U.S. law and independence from Zhao—while actually continuing to control the new U.S. platform and investor assets.

**Binance opposition.** All the Binance entities oppose the SEC's motion for TRO. The BAM defendants filed a separate opposition from Binance Holdings and Zhao.

BAM [stated](#) that a TRO is “unnecessary and unjustified,” saying it “steadfastly shares the SEC's desire to protect customer assets.”

“BAM customer assets are secure, appropriately segregated, and available to customers,” wrote BAM.

BAM asserts that the requested relief would primarily harm BAM's customers, effectively put BAM out of business, and prevent BAM from defending itself in the litigation. BAM also contends the SEC has not established that any digital assets offered by BAM for trading are securities.

In a separate filing, Binance Holdings and Zhao similarly [argue](#) that customer assets are safe and there is no emergency.

**Proposed consent orders.** The parties filed three separate proposed consent orders.

- The [proposed consent order](#) by Binance Holdings and Zhao includes measures to repatriate customer assets to the U.S. and ensure that U.S.-based personnel for BAM Trading and BAM Management—not Zhao—will have

complete control over customer fiat and crypto assets.

- The SEC filed a [redline](#) of the proposed Binance Holdings order. The SEC's version clarifies that the defendants must transfer Binance.US customer assets to BAM and establishes additional controls on asset transfers.
- BAM also filed a [redline](#) of the proposed Binance Holdings order. However, BAM [stated](#) that the differences between the two documents are minor and non-substantive, and all defendants agree that the Binance proposed consent order is acceptable.

**Next steps.** A mediation conference was scheduled for June 14 with Magistrate Judge Zia M. Faruqi.

This is case [No. 1:23-cv-01599-ABJ](#).

Attorneys: Matthew Scarlato for the SEC.

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