

## **Securities Regulation Daily Wrap Up, BLOCKCHAIN—D.D.C.: Binance raises ethical concerns about statements in an SEC press release, (Jun 23, 2023)**

By [Rodney F. Tonkovic, J.D.](#)

Binance accuses SEC counsel of making extrajudicial statements that could introduce confusion into the market and may risk tainting the jury pool.

Binance has filed a motion asking that the SEC be ordered to comply with the rules of conduct concerning extrajudicial statements. Binance objects to what it calls a misleading press release issued by the SEC soon after a consent order concerning Binance U.S. customer assets was reached. Binance says that the press release indicated that Binance commingled customer assets, but the SEC admitted in court just days before that there was no evidence of this. As a result, customers could be harmed and there is a risk that the jury pool could be tainted. The Binance defendants requested that the court issue an order directing counsel for the SEC to comply with all applicable rules of conduct concerning extrajudicial statements ([SEC v. Binance Holdings Limited](#), June 21, 2023).

**Press release.** On June 17, 2023, the court entered a consent order governing the control of BAM Trading Services customer assets. "Minutes later," Binance says, the SEC issued a [press release](#) stating that "Changpeng Zhao and Binance have control of the [BAM] platforms' customers' assets and have been able to commingle customer assets or divert customer assets as they please." According to Binance, however, the SEC acknowledge in court "just days earlier" that there was no evidence that BAM customer assets were "dissipated, commingled, or misused in any way." Binance contends that the press release seems to be designed to introduce unwarranted confusion into the marketplace, which could harm, rather than protect, BAM customers. There is also a risk of tainting the jury pool via misleading descriptions of the evidence.

**Control of assets.** The June 17 [consent order](#) concerns the control of customer assets. The order provides that all fiat currency and crypto assets held by customers will be repatriated to the U.S. and transferred to BAM Trading. The defendants will then confirm that BAM maintains possession, custody and control in the U.S. of these assets. BAM will further not provide control over any of the assets to Binance, Binance's CEO, or anyone affiliated with them. BAM may make transfers, but only to the parties and for the purposes set out in the consent order. BAM may continue operating in the ordinary course of business. The parties had previously been [ordered](#) to mediation to resolve their heated dispute over the SEC's motion for a TRO and asset freeze.

According to Binance, the declarations accompanying BAM's opposition to the SEC's TRO motion declare that customer fiat and crypto assets are secure. And, there was no "emergency" because BAM had been cooperating in good faith with the SEC for years. During the hearing, the court repeatedly—two dozen times, the motion says—asked SEC counsel whether there was any evidence of commingling, and the SEC eventually confirmed that there was none. But, immediately after the consent order was entered, the SEC issued the offending press release.

**Rules of conduct.** Binance asks for an order directing the SEC to follow the applicable rules of professional conduct. Under the rules adopted by the D.C. Court of Appeals, a lawyer engaged in a case being tried is prohibited from making extrajudicial comments that "will create a serious and imminent threat of material prejudice to the proceeding." SEC employees must also hew to ethical canons.

The SEC's press release is misleading, Binance says, because it contains statements known to be unsupported by evidence. In addition to the contested statement about commingling, the SEC said that it had secured "emergency relief." This is misleading because the consent order was the result of "weeks of negotiations," and there is no evidence that BAM customer assets are in danger. The SEC's press release creates a risk of material prejudice to the proceeding and risks tainting the jury pool, Binance says, and the proposed order would ensure that any future

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public statements by the SEC will not further prejudice the defendants and impact the proceeding.

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

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Companies: Binance Holdings Ltd.; BAM Trading Services Inc.; BAM Management US Holdings Inc.

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