

## [Securities Regulation Daily Wrap Up, ENFORCEMENT—2d Cir.: Appeals court affirms SEC subpoena order in digital assets investigation, \(Jun. 10, 2022\)](#)

Securities Regulation Daily Wrap Up

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By [Joanne Cursinella, J.D.](#)

The Commission did not violate its own Rules of Practice in the method of service; personal jurisdiction found valid.

The Second Circuit affirmed a district court order requiring compliance with SEC investigative subpoenas for documents from appellants Terraform, a Singapore-based company, and Do Kwon, a foreign national, as well as testimony from Kwon, that were served as part of an SEC investigation into whether the appellants violated federal securities laws in their participation in the creation, promotion, and offer to sell various digital assets related to the "Mirror Protocol," a blockchain technology ([SEC v. Terraform Labs Pte Ltd.](#), June 8, 2022, *per curiam*).

According to the appellate court's summary order, the appellants had argued on appeal that the SEC violated its Rules of Practice when it served the subpoenas by handing copies to Kwon, Terraform's CEO, while he was present in New York, and that the district court lacked personal jurisdiction because Kwon and Terraform had insufficient contacts with the United States. The appeals court rejected the arguments and found first that the method service of the subpoenas was in compliance with the rules, as the district court had held, and also confirmed that personal jurisdiction over the appellants was proper.

**Service.** According to the order, the appellants had agreed to provide certain information to the SEC voluntarily but after attempts at voluntary compliance, the SEC prepared the investigative subpoenas. A process server hand-served the subpoenas on Kwon on behalf of the SEC while he was in New York and emailed copies to the appellants' counsel.

This court found that the method of service under the circumstances was in compliance with the Commission's rules. The SEC could serve the corporate entity Terraform through Kwon, the company's CEO and authorized agent. The appellants had also argued, alternatively, that the copies of the subpoenas emailed to their counsel did not satisfy the rules because the email "did not purport to have effected service" via their counsel and was therefore not valid service.

But the court rejected this, saying, among other things, that their reading of the rules is contrary to the text and would produce absurd results by allowing a party to insist on service through counsel, but allow the party to block the service by not authorizing their counsel to receive any filings.

**Personal jurisdiction.** This court also confirmed that the district court properly concluded that it had personal jurisdiction over the appellants. The lower court's specific personal jurisdiction determination rested on seven contacts with the U.S., this court noted. Further, the appellants purposefully availed themselves of the U.S. by promoting the digital assets at issue in the SEC's investigation to U.S.-based consumers and investors. They also retained U.S.-based employees to promote digital assets in the U.S, entered into agreements with U.S.-based entities to facilitate the trade of the digital assets, and, while seeking to enter into an agreement with a U.S.-based company, the appellants indicated that 15 percent of its Mirror Protocol users are within the U.S.

Finding that the district court's jurisdiction over the appellants arose from such "purposeful and extensive U.S. contacts" and that the district court's exercise of jurisdiction was reasonable and would not "offend traditional notions of fair play or substantial justice" because the conduct was "purposefully directed" toward U.S. residents

and the suit arose from and related directly to those contacts, the appeals court affirmed the lower court's decision.

The case is [No. 22-368-cv.](#)

Attorneys: Eric A. Reicher for the SEC. Douglas W. Henkin (Dentons US LLP) for Terraform labs Pte Ltd.

Companies: Terraform Labs Pte Ltd.

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