

[Securities Regulation Daily Wrap Up, ENFORCEMENT—D.D.C.: SEC charges crypto giant Binance with registration violations, \(Jun. 5, 2023\)](#)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

The SEC alleges that the crypto platform operated unregistered exchanges and sold unregistered securities. In a massive 136-page complaint, the SEC is charging Binance Holdings Limited and its founder, Changpeng Zhao, with widespread registration and other securities violations. The document alleges that the tokens and programs traded on the world's largest crypto asset trading platform were unregistered securities and that the defendants operated unregistered national securities exchanges, broker-dealers, and clearing agencies. To avoid scrutiny by U.S. regulators, Binance allegedly directed U.S. customers to use VPNs to mask their locations and/or to provide know-your-customer information that omitted to disclose a U.S. nexus ([SEC v. Binance Holdings Limited](#), June 5, 2023).

SEC Chair Gary Gensler said in a [statement](#) that “Zhao and Binance misled investors about their risk controls and corrupted trading volumes while actively concealing who was operating the platform, the manipulative trading of its affiliated market maker, and even where and with whom investor funds and crypto assets were custodied. They attempted to evade U.S. securities laws by announcing sham controls that they disregarded behind the scenes so that they could keep high-value U.S. customers on their platforms.”

“We allege that Zhao and the Binance entities not only knew the rules of the road, but they also consciously chose to evade them and put their customers and investors at risk—all in an effort to maximize their own profits,” said Gurbir S. Grewal, Director of the SEC's Division of Enforcement.

Unregistered securities. While all eyes will be on the offering registration violations because of the importance of this question to the industry, the SEC doesn't turn to this issue until halfway through the complaint. The Commission argues that the offers and sales of BNB tokens and BUSD stablecoins, along with Binance's “BNB Vault,” “Simple Earn,” and staking-as-a-service programs, were not registered and not eligible for an exemption. These instruments were offered and sold as investment contracts: the white paper for the BNB ICO referred to participants as “investors” and tied its success to the success of binance.com.

Similarly, Binance marketed BUSD as a profit-earning stablecoin, referring to the annual percentage yields that investors could earn on their holdings. Simple Earn and BNB Vault are marketed as programs that pay interest to investors who lend their crypto assets to Binance in exchange for varying APY returns. The SEC also alleges that the staking-as-a-service program offered by defendant BAM Trading Services Inc. is a security because, while individuals can theoretically seek profit from their own staking efforts, BAM Trading promotes the program as an easier way to obtain staking rewards by pooling the crypto assets of a large number of investors.

Finally, the SEC lists a number of other assets traded on binance.com and binance.us that were offered and sold as securities. These include the native tokens or assets of the Solana, Cardano, Polygon, Filecoin, Cosmos, Sandbox, Decentraland, Algorand, Axie Infinity, and Coti blockchains, platforms, and ecosystems. Accordingly, Binance and BAM Trading were required to, but did not, register as an exchange, broker-dealer, or clearing agency.

U.S. dealings. According to the complaint, Zhao and Binance understood that they were violating U.S. laws, with the Chief Compliance Officer admitting to another compliance officer, “we are operating as a fking unlicensed securities exchange in the USA bro.” The defendants hired several advisors for help managing their legal exposure in the United States. One of these advisors came up with two potential approaches.

The first, “low risk” approach would be to actively engage with regulators and resolve any outstanding issues, but the consultant warned that this could result in the “complete loss of the US market during the settlement process.” The consultant recommended a “moderate” approach of establishing a U.S. entity to absorb “enforcement tensions” and insulate Binance from U.S. liabilities. The consultant recommended that the new entity release a detailed *Howey* analysis and then engage with the SEC to discuss proceeding as a broker-dealer or alternative trading system, “with no expectation of success and solely to pause potential enforcement efforts.”

Zhao and Binance followed the consultant’s advice to establish binance.us, but retained substantial control over that platform and subverted their own internal controls to allow U.S. customers to trade on binance.com. Zhao directed Binance to encourage customers to use a VPN to conceal their location so they could get around geographic blocks. Certain “VIP” customers in the U.S. were encouraged to submit updated know-your-customer information that omitted any U.S. nexus.

The SEC quotes Zhao as telling other Binance senior officials that this encouragement “needs to be finessed very carefully because whatever we send will be public. We cannot be held accountable for it.” An internal “VIP Handling” document instructed Binance employees to hint to customers that their IP address was the reason they were blocked, but employees were not to explicitly tell users how to get around that block. Later, when an employee asked the CCO if it was still a hard requirement to block U.S. customers, the CCO replied that it was, but that “On the surface we cannot be seen to have US users but in reality, we should get them through other creative means.”

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

Attorneys: Matthew F. Scarlato for the SEC.

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

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