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Treasury's Record $4.3B Crypto Exchange Fine Adds to Pressure on Digital Assets

Binance was fined for money-laundering just after Kraken was charged and less than one month after a jury found FTX's Sam Bankman-Fried guilty of fraud.

By Paul Mulholland

The Department of the Treasury last week issued a fine totaling approximately $4.3 billion against Binance, a crypto exchange, among other penalties. The Securities and Exchange Commission previously charged Binance with operating as an unregistered securities exchange in June, and those allegations have not yet resolved.

According to the Department of Justice, Binance pleaded guilty to a wide range of laundering money, violating sanctions and transmitting unlicensed money as part of its settlement.

That was just one day after the SEC, on November 20, charged Kraken, a crypto exchange, for operating as an unregistered securities exchange and only weeks since a federal jury in New York found former crypto-king Sam Bankman-Fried guilty on seven criminal counts of fraud and conspiracy after a five-week trial and only a few hours of deliberation. Bankman-Fried was a high-profile cryptocurrency entrepreneur and co-founder and former CEO of the now-bankrupt crypto exchange FTX, as well as the crypto trading company Alameda Research.

regulatory approval. It also comes as SEC Chair Gary Gensler continues to call cryptocurrencies a “highly speculative asset class” and assert that the crypto industry as a whole is “rife with fraud and scams and hucksters,” as he did at a July hearing hosted by the Financial Services and General Government Subcommittee of the Senate Committee on Appropriations.

The fines against Binance break down into two parts: one for about $3.4 billion, issued by the Financial Crimes Enforcement Network for money-laundering violations; and another for $969 million, issued by the Office of Foreign Asset Control, for more than 1.5 million individual violations of U.S. sanctions policy.

According to the settlement reached with OFAC, though Binance was fined $968 million, the maximum statutory penalty for its alleged sanctions-related offenses was actually $592 billion. The OFAC found that Binance’s violations “were egregious and were not voluntarily self-disclosed.” These violations took place from August 2017 through October 2022.

Most of the trading volume, or about $600 million, involved transactions with

The OFAC found that Binance encouraged U.S. users to use virtual private networks, or to provide foreign passports if they were multinationals, as a way to maintain appearances of compliance. This practice, according to the OFAC, was endorsed and pushed by their then-chief compliance officer.

According to FinCen's order, the CCO wrote once to another employee at Binance: "We try to ask our US users to use VPN / or ask them to provide (if [they] are an entity) non-US documents / On the surface we cannot be seen to have US users but in reality, we should get them through other creative means."

Binance consented to the appointment of an independent compliance monitor from the OFAC for five years. The Department of the Treasury also imposed a $150 million suspended fine against Binance that will be levied if Binance does not comply with Treasury's compliance program.

The Treasury Department wrote in a release that "Binance was required to report suspicious transactions to FinCEN through suspicious activity reports (SARs). FinCEN's investigation revealed that Binance's former Chief Compliance Officer told personnel that the CEO's well over 100,000 suspicious transactions that it processed as a result of its deficient controls, including transactions involving terrorist organizations, ransomware, child sexual exploitation material, frauds, and scams."

The OFAC noted in its order that one Binance employee noted in business communications that effectively blocking IPs for high-risk jurisdictions would be necessary to work with institutional and other large investors.

The charges against Kraken prompted Wagner Law Group partner Kimberly Shaw Elliott to caution fiduciaries about the risks of crypto assets, given their compliance issues:

"The SEC's new enforcement activity should be a clear warning to not only unregistered crypto providers and the advisers who recommend crypto investments, but also to retirement plan fiduciaries who approve those investments," she wrote. "Is it prudent to place faith in the seller or holder of crypto who does not go through the rigors of registration?"

On the Binance record-breaking fine, Marcia Wagner, the founder and managing partner of Wagner Law Group, include or possibly remove or reduce the level of crypto assets in some form on its investment platform, but the fact of the SEC action against Binance, as well as other recent events such as the fraudulent activities of FTX, would clearly be a factor a plan fiduciary would need to take into account as part of its due diligence in determining the prudence of such an investment."

She added that, "since the Department of Labor guidance regarding cryptocurrency, in my experience, clients have not shown an interest in including crypto assets on their investment platform, if for no other reason than the litigation risk if a crypto asset fund on a plan's investment platform went sideways. That litigation risk is now obviously heightened."

Tags: Binance, Cryptocurrency, Department of Justice, FTX, Gary Gensler, Kimberly Shaw Elliott, Kraken, Marcia Wagner, Sam Bankman-Fried, Securities and Exchange Commission, The Wagner Law Group

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UN's Net-Zero Asset Owner Alliance Proposes Climate Engagement Guidelines

A new report from the United Nations initiative aims to guide asset owners in setting and communicating about ESG goals with their asset managers.

By Matt Toledo

The United Nations’ Net-Zero Asset Owner Alliance, an initiative that includes 86 institutional investors who manage $9.5 trillion in assets and share the commitment to become net-zero by 2050, released a report discussing how asset owners should communicate their goals for environmental, social and governance investing with their asset managers.

Members of the alliance have committed to transition their investment portfolios to be net zero of greenhouse gas emissions by 2050. These include some of the largest asset owners and institutional investors, including Alecta, AMF, Nordea Life and Pension, Allianz and CalPERS.

According to the paper, “Elevating Asset Manager Net-Zero Engagement Strategies,” asset manager engagement is necessarv to address idiosvncratic risk in their asset managers may not be in full communication with asset owners about climate investment goals.

"Asset managers must adopt a consistent, transparent, and outcomes-oriented climate engagement strategy, which recognizes that climate change poses systemic risks to asset-owner portfolio returns," the report stated. "This alignment of engagement outcomes to portfolio management and stewardship decisions is critical for asset managers' continued ability to win mandates of clients committed to net-zero."

Governance and Integration

The report advised asset managers to implement governance and oversight structures that ensure engagement activities are integrated across their businesses to support their broader climate engagement strategies. Asset managers should take the following steps to ensure proper governance, according to the report:

- Demonstrate documented standards to ensure consistency of messaging, ambition and reasoning for action across stewardship, portfolio management and executive management teams;
- Show how climate engagement

- Adopt governance structures that ensure clear accountability for the oversight, implementation and verification of engagement activities.

Publishing Climate Engagement Strategy

Asset managers should design their strategies so that asset owners can assess whether a manager's strategy is aligned with the owners' own goals, the report stated. The following guidelines were recommended for asset managers to follow in developing their climate strategies:

- Describe how climate engagement fits into broader climate risk management approaches and investment portfolio activities;
- Illustrate how climate engagements are planned; and
- Ask companies and issuers to set public and explicit sector-based expectations for companies' and issuers' climate action. Expectations should make use of public standards or benchmarks.

Climate Engagement Practices

According to the alliance, climate engagement practices should reflect the asset managers' published climate engagement strategies. The report listed

- Outline how climate engagement efforts are prioritized across the firm and between teams, including how resources are allocated to climate engagements and how and why priority issuers are selected for engagement;
- Demonstrate how their internal tracking systems enable sharing of climate engagement insights and actions across teams and portfolio management activities; and
- Consider regularly publishing engagement memos or research papers to highlight progress, practical expertise and knowledge acquired from conducting climate engagements.

Transparency and Accountability

Asset managers should make appropriate disclosures relating to their climate engagement strategy implementation, according to the report. These disclosures should be made to ensure asset owners are aligned with the asset manager. The UN recommends asset managers take the following steps:

- Timely transparency (to clients at a minimum and potentially the broader public) on engagement objectives set and progress against these within the reporting period;
- Transparency to the broader public relating to asset managers' messaging

address the systemic hurdles to net-zero pathways that cannot be addressed solely through corporate engagement, such as expanding beyond issuer engagement (into e.g., policy or sector engagement).

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Research November 28, 2023

Inflation Is Down, but How Long Will That Last?

For several years, a Natixis report finds, as the price trends mostly point downward.

By Larry Light

It looks as if inflation is cooling, numerous indicators show. But how enduring will that be? Pretty enduring for at least the next several years, according to a Natixis research paper by Jack Janasiewicz, a portfolio manager and strategist, and Garrett Melson, a portfolio strategist.

The Consumer Price Index print for October, 3.2%, was down from the previous month’s 3.7% and far down from the pandemic-era peak of 9.1% in June 2022. Natixis noted that monthly CPI boosts lately are near their pre-pandemic levels, meaning low. Month over month, the once-elevated core CPI (that is, minus volatile food and energy prices) has tumbled since the pandemic.

The Atlanta Fed’s Sticky ex-Shelter Consumer Price Index, which tracks prices that change less often than others, such as service costs, is at a low ebb. This is important because service costs jumped last year and have since settled down.

There has always been a gap between CPI (which measures what people say they buy) and the Fed’s favorite yardstick, the Personal Consumption Expenditures Index (which reflects what they actually buy), or PCE. The difference has narrowed radically from a year ago, meaning consumers are less freaked out by price hikes, which had caused them to believe their perceived outlays were more expensive than they really were.

Similarly, wholesale prices for used cars, an often-eyed barometer for consumer behavior, is way down. “Used car prices

2021, are mostly flat now. Ditto for energy bills: gasoline, heating oil and natural gas. Meanwhile, a Bloomberg economist survey found strong expectations that the CPI should approach 2% in early 2024.

Housing costs, which make up almost half of the core CPI, have been a stubbornly high component, mainly owing to reduced supply as builders cut back after the financial crisis of 2008 and 2009. The National Association of Home Builders expects this situation to ease, and so does Natixis.

"Shelter prices will drop—not if, but when," the firm's report stated. Wages have climbed, and that should make homes more affordable, Natixis opined. At the same time, the annualized rate of ascent for pay is slowing, from 8% a year ago to 5% now, which should prevent wages from fueling further inflation, per the Atlanta Fed.

The psychological effect of public inflation expectations is always powerful, and the Natixis study, citing a University of Michigan poll, showed that consumers largely expect prices to fall over the next five years.

What's more, the inflation breakeven rate —the difference between the yield of an from almost double that at the outset of 2022. The smaller recent figure indicates lower anticipated inflation, Natixis explained.

If Natixis is right, one economic worry for the general public should dissipate.

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