

## United States: SEC vs. WAHI: An Insider Trading Action With Surprising Impacts On The Investment Management Industry

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The SEC has made a new crypto move – and its impact is broad.

As described in our FinTech Law Watch [blog](#) published on 29 July 2022, the SEC recently declared that 9 crypto assets were “securities” in a complaint relating to insider trading violations (Wahi Complaint). Notably, separate actions against the issuers of the assets – AMP, RLY, DDX, XYO, RGT, LCX, POWR, DFX and KROM – for making unregistered securities offerings have not yet been taken. Nevertheless, the SEC’s taking a position on the status of the assets as securities in the Wahi Complaint raises questions for the investment management industry, including:

- How will investors holding the assets be affected if the exchange stops trading the assets?
- How should funds (registered investment companies, hedge funds and private funds) holding any of the assets, or assets with similar features, address their own assessment of the assets, particularly if the funds have made a reasonable determination that they are not securities?
- How should advisers and brokers respond to the action, including in connection with advisers’ codes of ethics, disclosure obligations, portfolio holdings and their own registration requirements?
- How should issuers, funds and advisers modify their procedures for analyzing whether an asset is a security, if at all?

With no definitive regulation from the SEC or the CFTC regarding the “security” status of crypto assets, issuers, advisers, broker-dealers and funds have had to develop their own processes for determining which assets are securities based on the little guidance available, including the SEC’s “Framework for “Investment Contract” Analysis of Digital Assets” (the Framework). The SEC’s assertion in the Wahi Complaint may cause funds to reconsider prior reasonable judgments made, consistent with the Framework, that the assets were not securities. This may result in firms being

required to revisit disclosure, sell client holdings, and amend or adopt compliance policies and procedures

Without more clarity from the SEC, and despite industry calls for rulemaking governed by the Administrative Procedure Act, such a broad and sweeping action may chill the digital assets industry and have significant impacts on how advisers, brokers, and funds operate.

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