

## SEC's Settlement in Wahi Brings an End to Its Extended Securities Claim

MAY 31, 2023

On May 30, 2023, the U.S. Securities and Exchange Commission (SEC) settled its case against a former Coinbase employee and his brother for alleged “insider trading” of digital assets. At the heart of the dispute was whether several digital assets trading on the platform were properly regarded as “securities” under U.S. law.

In its proposed judgment, Ishan and Nikhil Wahi are to be permanently enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and held liable for disgorgement of “ill-gotten gains” from the conducts at issue in the case. However, notably missing from the judgment are any admissions that the defendants engaged in securities transactions as a part of the alleged misconduct. Instead, the defendants agreed to admit the allegations as true only for purposes of exceptions to discharge under the Bankruptcy Code. The settlement brings some relief to participants in the digital asset industry, as a ruling in favor of the SEC on the securities issue might have brought significant consequences to not only the defendants, but also to market participants that were not represented in the case.

The SEC had filed its complaint in the U.S. District Court for the Western District of Washington alleging that Ishan Wahi, a former product manager at Coinbase, had shared confidential information regarding at least nine digital assets with his brother Nikhil Wahi and his friend Sameer Ramani.<sup>1</sup> In doing so, the SEC claimed jurisdiction over the case because, the digital assets were “investment contracts,” and thus “securities” according to a 1946 U.S. Supreme Court decision. In *SEC v. W.J. Howey Co.*, the Supreme Court had set forth a four-prong test for determining whether an asset was an “investment contract” that is governed by federal securities laws.<sup>2</sup> The Wahi brothers subsequently responded in their motion to dismiss that the digital assets are not “investment contracts” and that the SEC should not be permitted to establish its authority over such assets through enforcement.

Many other market participants, including the Chamber of Digital Commerce (represented by Winston & Strawn), filed amici briefs that raised concerns about the SEC's case. The [Chamber of Digital Commerce's brief](#), for example, noted that the SEC had not given sufficient guidance on which digital asset transactions would be deemed “securities transactions.” The brief also argued that a decision in favor of the SEC on the issue could inflict collateral damage on various interested parties to the digital asset industry, particularly those engaged in secondary market transactions, and expose them to governmental and private litigation. Further, the brief pointed out that the authority to regulate digital assets is a “major question” that requires “clear congressional authorization,” which the SEC does not have.

Even a commissioner of the Commodity Futures Trading Commission criticized the SEC’s claims as “a striking example of ‘regulation by enforcement.’”<sup>3</sup>

While the SEC is likely to continue to claim authority over many digital asset transactions, the settlement could mark a limit to the extent that it is willing to do so, and it increases the stakes of several other significant digital asset matters pending before the courts, including the closely-watched SEC litigation against Ripple, pending in the U.S. District Court for the Southern District of New York.

We will continue to monitor developments in the digital assets and blockchain technology industry and provide friends of the firm with updates as they become available.

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<sup>1</sup> Ramani remains at large and has not appeared in court during the proceedings.

<sup>2</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

<sup>3</sup> Caroline Pham, Commissioner, CFTC, *Statement re: SEC v. Wahi* (July 21, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072122>

3 Min Read

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