

The Distributed Ledger

Blockchain, Digital Assets and Smart Contracts

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Alexander C. Drylewski

Partner / New York
212.735.2129
alexander.drylewski@skadden.com

Stuart D. Levi

Partner / New York
212.735.2750
stuart.levi@skadden.com

Daniel Michael

Partner / New York
212.735.2200
daniel.michael@skadden.com

Spurthi Jonnalagadda

Associate / New York
212.735.3665
spurthi.jonnalagadda@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

DOJ Relies on Traditional Statutes To Charge Defendants in Cryptoasset Fraud Cases

Two recent indictments highlight the Department of Justice's (DOJ's) continuing use of the traditional wire fraud, money laundering and identity theft statutes to pursue fraud involving digital assets, indicating that law enforcement will look to prevent theft and scamming regardless of the novel types of assets targeted by the fraud.

Hugh and Brandon Austin: Cryptocurrency Fraud

On July 12, 2023, the DOJ announced charges against Hugh Austin and his son, Brandon Austin, for conspiring to steal millions of dollars' worth of cryptocurrency. The indictment alleges that the father-son pair scammed investors by offering to (1) serve as brokers for sales of large quantities of cryptocurrency at below-market exchange rates, (2) provide short-term investments in cryptocurrency that purportedly offered high returns, and (3) provide marketing and advertising services to small businesses.

The indictment alleges a series of crimes: The two induced a Japanese cryptocurrency firm to transfer \$600,000 worth of cryptocurrency in exchange for fundraising and marketing services that were never provided. Another victim transferred \$5 million for the purchase of cryptocurrency, which was never delivered. In September 2018, the defendants stole \$100,000 from a cryptocurrency start-up, promising to invest the money in a high-return opportunity. Instead, the funds were used for personal expenses. Many other victims transferred money on the promise of receiving cryptocurrency in return, which they never did. In total, Hugh and Brandon Austin allegedly defrauded 20 victims out of more than \$10 million.

Brandon Austin pled guilty to one charge of conspiracy to commit money laundering on April 13, 2023. As part of his plea, he was ordered to pay more than \$3.4 million to victims. The DOJ charged Hugh Austin, who was arrested on July 5, 2023, with one count of conspiracy to commit wire fraud, one count of conspiracy to commit money laundering, and one count of conspiracy to commit interstate transportation of stolen property.

Soufiane Oulahyane: Spoofing OpenSea Website

On July 10, 2023, the DOJ revealed an indictment against Soufiane Oulahyane, charging the Moroccan citizen, with operating a website that spoofed that of the largest NFT marketplace, OpenSea. According to the indictment, he created a website that mimicked the appearance of OpenSea to trick users into believing it was the actual site. He used

The Distributed Ledger

Blockchain, Digital Assets and Smart Contracts

paid promotions to ensure that anyone who entered “opensea” in a popular search engine would see his website as the first hit. Once users entered the website and provided their login credentials, Oulahyane allegedly would use their seed phrase to transfer assets from the victims’ wallets to his own.

On September 26, 2021, one victim navigated to Oulahyane’s fake OpenSea site and entered their credentials. Oulahyane then transferred the victim’s assets to his own wallet, selling a number of the victim’s NFTs. Among the assets he sold was one Bored

Ape Yacht Club NFT that the victim had purchased for 49 ETH (worth approximately \$92,968 as of July 2023) and a Meebits NFT that was purchased for 9.88 ETH (worth approximately \$18,645 as of July 2023). In total, he stole 39 assets for which the victim had paid \$448,923.

The DOJ charged Oulahyane with one count of wire fraud, two counts of using an unauthorized access device to effect transactions, and one count of aggravated identity theft. Oulahyane is currently in Moroccan custody for local charges.