SEC v. Binance: The Dis-Embodiment of Howey?

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On Friday, June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia struck a serious blow to Securities and Exchange Commission ("SEC") Chair Gary Gensler's regulation-by-enforcement campaign against secondary crypto asset market exchanges. In *SEC v. Binance*, an SEC enforcement action seeking to impose federal securities regulations on a variety of transactions involving foreign (Binance.com) and domestic (Binance.us) digital asset trading platforms, Judge Jackson partially granted the Binance defendants' motions to dismiss the SEC's complaint. Among other things, Judge Jackson's decision reaffirmed that crypto assets themselves are not "securities" subject to SEC oversight, rejected the SEC's allegations that crypto tokens somehow "embody" investment contract securities, and dismissed the agency's claims relating to secondary market sales of crypto tokens and certain other crypto asset products and services. Judge Jackson's nearly 90-page Memorandum Opinion and Order disposing of the motions, perhaps the most thoughtful and detailed judicial reckoning yet to address a panoply of regulatory issues impacting the crypto asset sector, may have far-reaching consequences for all market participants. Most importantly, the Order casts doubt on the SEC's authority to regulate secondary spot market transactions on crypto exchanges.

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