
“Unclear at Best”: SEC v. Payward, Inc. et al. and the Ongoing Struggle to Understand Secondary Crypto Transactions

Date: 09/05/24

On August 23, 2024, U.S. District Judge William H. Orrick of the Northern District of California issued an order denying the defendants' motion to dismiss in *SEC v. Payward, Inc. and Payward Ventures, Inc.* (“Order”). In Payward, the Securities and Exchange Commission (“SEC”) filed a complaint alleging that an online crypto asset trading marketplace (the “Kraken Market”) operated by Payward, Inc. and Payward Ventures, Inc. (together, “Kraken”) was an unregistered securities exchange, broker-dealer, and clearing agency, all in violation of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Similar to the SEC’s enforcement actions against crypto asset trading platforms Binance, Coinbase, and Bittrex, the SEC’s claims against Kraken turn on whether at least some of the crypto assets (sometimes referred to as “tokens”) available on the Kraken Market (the “Identified Assets”) are themselves “securities” or, alternatively, whether secondary transactions involving the Identified Assets by users of the Kraken Market are securities transactions — a logical and legal prerequisite for subjecting a variety of Kraken’s activities to SEC regulation.

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