

diffusetap
Virtual Event Series

That Token Isn't Crypto

Guest Speaker:



Maggie Sklar

Public Policy & Regulation
Global DCA

Hosts:



Kenny Estes

CEO & Founder
Diffuse



Ayla Kremb

COO & Co-Founder
Diffuse



DiffuseTap: That Token Isn't Crypto

Last time on DiffuseTap, Maggie Sklar, who is Chair of the Public Policy and Regulation Committee at the Global DCA, talked to us about the recent SEC lawsuits against Binance and Coinbase, what the SEC's new definition of an exchange means for the industry, and what motives Chair Gary Gensler might have in his hard stance against crypto.

Want to make friends from the Diffuse Fund Ecosystem? Email contact@diffusefunds.com.

DiffuseTap

This networking session is part of our weekly virtual events series. Networking (you'll bump into at least a dozen high caliber fund managers) meets purposeful (you'll tap into brand-new sources of ideas)... straight from your armchair like a boss.

Meet the Speaker



MAGGIE SKLAR, the Chair of the Public Policy and Regulation Committee at the Global DCA, is a finance and regulations expert with over 17 years of legal and policy experience working with government institutions and law firms as an advisor on financial markets. Currently, she is Banking and Financial Services Partner at Davis Wright Tremaine LLP.

LinkedIn: [@maggiesklar](#)

About Diffuse®

We are an alternative fund platform offering differentiated investment products. From digital assets to VC funds and beyond, we identify green field investment opportunities we feel will have market beating returns and turn them into professionally managed funds. For more information, visit www.diffusefunds.com.



KENNY ESTES: Without further ado, the person you're all here to hear from, Miss Maggie Sklar. Would you mind telling the good folks a bit about your background and what you're up to now?

MAGGIE SKLAR: Sure. I'm Maggie Sklar, thank you for inviting me. I'm a banking and financial services partner at the law firm Davis Wright Tremaine. Before that, I was the senior policy advisor for financial markets and the director of international engagement at the Chicago Fed, which was also a widespread Federal Reserve program to provide financial markets advice, including crypto and payments advice.

Before that, I was at the CFTC. For several years, I was the senior counsel to chair Giancarlo, also known as crypto dad. I am in some very fun memes behind him, when he claimed that name on Twitter and his Twitter numbers went from around 100 to 40,000 during that hearing. Those were good times. And I was also the senior counsel to Lab CFTC, which was created under Chairman Giancarlo to work on FinTech including digital asset issues, also AI, machine learning, and others.

I was the Associate Director for international affairs. I was also the senior counsel to Commissioner Mark Wetjen. I was special counsel in the division of market oversight. And for about eight years before that, I also worked as a trial and litigation attorney specializing in financial markets and securities for a couple of international law firms.

AYLA KREMB: Beautiful. Well, you obviously have all the knowledge. Now we're just going to ask you the right questions to get to it. Maybe diving right up the top. This chat is really about separating what is crypto, versus what is a token? Where do things get commingled in there? We will start with some definitions. Where would you draw the line between a token and crypto?

MAGGIE: One of the interesting things about when we originally talked about the timing of this and went through prep, and then what happened two weeks ago is, this list is very, very different than what I thought. I basically tore up all of my notes. And that obviously needs to have a discussion because it has drastically changed, even between last month and this month, and last year and this year.

I think given the Binance and Coinbase complaints filed by the SEC, we are now up to 70 digital assets that have been classified as securities in filings by the US SEC. This list was not this long just even three weeks ago. But that's where we are, at least from the complaint side of this. I'd like to talk a little bit about that, because it matters in the context of where cryptos and tokens are going, and then we could go into some specific ones that they've listed.

I assume everyone is probably aware that this June, the SEC filed a case against Binance, Binance US, and its President, CZ. And then, they also filed against Coinbase, which is the largest crypto exchange in the United States. These lawsuits are really notable for going after the largest players, particularly in the United States, but just generally large players in this space.



The SEC has had previous lawsuits, many of those have been more about fraud Ponzi schemes or even smaller, easier fruit. But in the [Binance complaint](#), the SEC alleges that it's offering unregistered securities and staking programs. How they define this program is where customers lock their crypto in exchange for rewards.

I know from folks in the industry that perhaps, that is not the definition of staking for everyone. But Binance was also additionally charged with engaging in issuing BNB, its token, and BUSD, which is the Binance stable coin. As we get into the discussion of what are tokens, what are cryptos, and what are stable coins, there is a really interesting dynamic to point out there. The Binance case also includes allegations targeted at [CZ](#), whereas the Coinbase case does not include executives. I can turn to Coinbase because I think it's part of the narrative now.

KENNY: Yeah, because it's super topical right now. We talked about the SEC and how they're going after Coinbase and Binance, and trying to class everything of the 70 assets as securities. Can they do that unilaterally? Is that something that the SEC has the power to do? Does that require congressional act? I know the Hinman emails recently came out, and there's some debate whether this is even in the purview of the SEC.

MAGGIE: Sure. When it comes to where I thought we were probably last year, or even the year before, I would say that from my experience in the government, there were some agreements in the previous administration about certain tokens and certain cryptos, and where certain things were. Given that there are over 70 being classified by the SEC, we're really not there anymore.

Utility tokens, which are tokens that are meant to serve a purpose and are represented by their actual underlying value, or meant as a faster form of payment system, to me have always seemed different than "joke coins". I didn't want to use that word but that's what they call them. These are coins where there is not necessarily a utility or any underlying value tied to them.

There has always been that part of the discussion. But I would say even for coins like that, if people want to do those, then I guess why not. I mean, Beanie Babies exist, and there are Beanie Baby exchanges and baseball card exchanges and certain things like that. But crypto brings in this heightened level of scrutiny.

One of the things I also like to point out, and I'm having a lot of presentations on this as well, is when you look at the value of crypto versus the things that I was doing at the CFTC. We were regulating, at the time, a \$400 trillion market. Now it's \$600 trillion. But if we're talking about the crypto token market, no matter how you define it, it's only under \$2 trillion.

There is an increased level of scrutiny. There is not a great definition. I think we are all still fighting over the [definitions](#), including in the most recent. I helped work with the Global DCA on the response to the [definition of exchange](#) during the reopened public comment period by the SEC yesterday, and we're still arguing over some of these definitions. The comment period ended yesterday, but that discussion is still



ongoing. I also have a comment period paper as well. That comment period will end at the end of next month.

That's where we are on the difference between cryptos, tokens, and utility tokens in jurisdiction. In preparing for this, I knew Binance and Coinbase were a given. It just really changed the landscape, and I'm looking at some of them and some others too. Mango, for example, was already involved in a CFTC case months ago. But now, according to the SEC, it's a security.

I mentioned Binance USD, or BUSD. That's a stable coin. And under current potential legislation, stable coins would actually wind up back and would wind up under the Fed, not the SEC. And because people don't seem to remember, I would also point out that the CFTC brought an action against Tether, which is a stable coin. That was when I was there, around 2017.

The CFTC also has history in this space as to where the definitions of some of these are. I'll let you ask me a question because I feel like I probably can keep opining on things, but if there was something I missed covering, please let me know.

AYLA: There is so much juice there in all of those topics. Maybe we'll start with something for folks that might own coins, or that might be running a company that has issued a token of some kind, and are now worried that "Hey, you might be misclassified as crypto. That will ruin our whole business model."

How should people think about the assets that they own or the assets that they're issuing? If they're thinking initially that there is going to be a token and not actually crypto, what should they be doing, now that everything seems to be crypto?

MAGGIE: It's difficult because I thought I would have a more positive or more optimistic answer. It just really has changed in the past few weeks. The list is just getting much longer, and now it includes things that I assumed and may or may not have advised on, like being decentralized or focusing on being a DAO and getting out of the centralized space.

It also includes utility tokens. I think there is a need for continued education at some of the agencies, and their bill on staff changes as well. At the end of the day, legislation is going to have to happen in order to get out of this "regulation by enforcement" space that we're in, because that's where we are. Personally, I've always thought Solana is pretty decentralized, but it's on this list. I know Polygon is in there too.

When you look at the list, I think a lot of them were trying to do what they were trying to do, which is to become decentralized or become utility tokens, and not securities. Or rather, to become commodities. So, there is this definitional problem. There is this funny issue when you're in it. At the CFTC, everything is a commodity, unless it's a security. And when you're the SEC, everything is a security unless it's a commodity.



These two things cannot co-exist. And it really has only come up a couple of times. What's fascinating about crypto and digital assets is that it has actually brought that question to the forefront. Because it's not defined. I mean, even the weather, for example, is a commodity under the, under the CFTC. Bringing in a force of action against the weather is pretty much impossible.

But technically, the weather is a commodity. So, without more clarity on that, it's a difficult proposition to get together. I know there is an example that some people use that "Well, the SEC and the CFTC could work together because they did on security futures, for example." Yeah, but that took 20 years.

And in the meantime, that main exchange that was offering those types of products lost a ton of money and business. And then people think about, "Well, should I go abroad? Or should I just close the business altogether?" And so, just like I said, it is a different space from where we were about two weeks ago, with regards to how some of these are being defined.

I go back and forth myself on whether I think the courts are the best place for this to be decided or not. I think it should be from Congress, but even the courts might give clarity. That said, I would point out that if we're talking about courts, we have to consider the Ooki DAO case, which the CFTC won. The court decided that the DAO can be sued and be served, and needs to pay out money because they were offering a commodity. The SEC thinks it's a security.

So, is it a security? Is it a commodity? Is it something else? And how do you even get the money from DAO token holders? The DAO token holders certainly were not committing fraud or doing anything.

KENNY: I have an interesting question for you. One of the Diffuse board members is also on the board of the CME. And when Gary Gensler was the head of the CFTC, he aggressively pursued CME, and it caused a lot of issues. They proceeded to then walk back a lot of what he did.

Now, he's doing a lot of similar things with crypto and the SEC, taking a very hard stance and raising his personal profile. And the pet theory is that he's doing all of this to become the Secretary of Treasury, and the SEC is going to walk it all back. How much of this do you think is politics posturing and ego-driven? And how much of it is actually trying to solve the larger problem?

MAGGIE: I think a lot of it is ego-driven. It's a court or jurisdictional issue, or a US issue that other countries don't have. Other countries are imposing other crypto regulations, and it's not to say that they're good or bad. I mean, I think Europe's MiCA is rather restrictive. That said, they managed to get it done because they didn't have five financial agencies all competing against each other.

There is a jurisdictional battle that is happening. It's something I used to participate in. Frankly, when I was in the government, I worked for the CFTC when Gary Gensler was chair. I've worked for a chair and a commissioner and an acting chair. And so, I know what this looks like from a political level as well. And



yes, I'm pretty sure it's public information that when Gary went to work for Hillary, that was where he wanted to be. He wanted to be the Secretary of Treasury.

I mean, it's attention-getting, so it helps when you are fighting the battle. It's what you see as your personal battle for getting attention, or press, Wall Street Journal coverage, etc. In my own personal opinion, I think it's really distracting from the other things that the SEC and the CFTC and the Federal Reserve regulators should all be worrying about.

That includes the effects of interest rates, volatility in the markets, spoofing, etc. There is so much that is not happening at agencies because they are focusing on the \$1 trillion part of what's happening in the United States, rather than focusing on the \$600 trillion in swaps, the trillions and repo, and so on.

There is so much money and capital formation in the United States that crypto has become, in my personal opinion, a complete distraction. And I think they missed the boat on AI too, because in the focus on crypto, there has been a lot less focus on AI. I think that's something that we all need to be thinking about as well.



Thank you for downloading this DiffuseTap event transcript.

[Sign up for upcoming sessions](#) and check out [past features and event transcripts](#).



Dennis Chookaszian

Corporate Director, CME Group

DiffuseTap: Institutional Grade
Governance

Sharing his decades-long expertise on corporate governance, Dennis talked about how to avoid a co-partnership going sour, the problem with overly idealistic CEOs, and the importance of keeping your board in check. [Read on](#)



Susan Brazer

CEO & Founder, LionShare Media

DiffuseTap: Media Metaverse
2022

Susan described the 2020 digital media landscape; the evolution of media distribution; how converging, emerging technology points to the metaverse; and the prospect of having an open, decentralized, and free Web 3.0 marketplace. [Read on](#)



Raj Mukherjee J.D.

VP/Global Head of Tax, Binance.US

DiffuseTap: Crypto Taxes
Decoded with Binance.US

Raj explained the complexities of the US crypto tax landscape, how he built a dynamic tax information system for [Coinbase](#) and [Binance](#) from scratch, and how investors can profit from crypto without getting caught in a taxation mess. [Read on](#)

JOIN US