



## Crypto Parties Can Stand Up to Regulatory Overreach

**U.S. regulators are aggressively asserting authority over the cryptocurrency industry, exposing more parties to risks of investigation and enforcement. However, as a recent Kobre & Kim settlement demonstrates, targets should think twice about deference – standing up to the regulators can pay dividends.**

September 28, 2023

U.S. regulators, including the U.S. Department of Justice (DOJ), Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), have long tried to aggressively stretch the bounds of their authority over the cryptocurrency and digital asset space, deepening the risks and uncertainty exchanges and other parties face as they continue to innovate.

While targeted parties may think deference to regulators can earn them leniency, many soon find that years of costly cooperation can still result in significant penalties. Kobre and Kim recently obtained a settlement demonstrating it can pay dividends for targets to stand up to regulators and fight for their rights.

### The Settlement: Reducing the Demanded Fine to Zero

Kobre & Kim represented the co-founder of cryptocurrency exchange Bittrex Inc. After a multi-year investigation into the client and the company, the SEC sued them both (along with Bittrex Global, an offshore cryptocurrency platform), alleging Bittrex was an “unregistered” securities exchange and demanding hundreds of millions of dollars in disgorgement.

Rather than bow to the pressure to settle, Kobre & Kim and its co-counsel took the SEC head-on and litigated the case. After moving to dismiss, the team was then able to negotiate a favorable resolution for the client, by which the client was not subject to any financial penalty or payments and simply agreed not to violate the law. Meanwhile, the exchanges agreed to pay US \$24 million, a fraction of what the SEC alleged to be subject to disgorgement.

### Standing Up to Regulatory Overreach

As the settlement demonstrates, the aggressiveness of the SEC and other regulators can and should be challenged. Targets looking to stand up for their rights should consider the following:

**Know Your Foe.** Most countries do not have an established crypto regulatory framework or are refining nascent ones. In some cases, multiple regulators fight to oversee the domestic crypto industry. At the U.S. federal level, the CFTC is competing with the SEC for a slice of the pie. Stakeholders should therefore consider each agency's strengths and weaknesses before responding.

**Reconsider Cooperation.** Many targets of regulatory enforcement reflexively cooperate, hoping for a better outcome. They should reconsider this approach: targets are often “rewarded” with rounds of invasive and costly information demands that result in little cooperation credit.

**Go On Offense.** Crypto stakeholders should not be afraid to act with speed and aggression. They should test the reach of a regulator's authority (both within the crypto industry and, for foreign stakeholders, across jurisdictions), seize control of the narrative, challenge the enforcement process and raise the stakes for regulators through strategic cross-border court filings and information demands.

As regulators attempt to supervise the growing crypto and digital asset space, many are aggressively overstepping the bounds of their authority in their enforcement activities. Crypto exchanges and other parties are not defenseless, however – as exemplified by the recent favorable settlement with the SEC, regulatory overreach can be successfully defeated by those willing to stand up and fight.

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### About Kobre & Kim

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct.

Our team of independent advocates in cross-border government enforcement investigations and actions:

## KOBRE & KIM

includes over a dozen former U.S. government lawyers based globally;  
has served as lead counsel in prominent enforcement actions including those involving  
cryptocurrency enforcement, securities law, market manipulation, bribery and corruption,  
antitrust and competition, economic sanctions, asset forfeiture, money laundering,  
extradition, fraud and other misconduct; and  
are able to either advocate directly or to work cooperatively with local counsel, in  
jurisdictions in the U.S., UK, EMEA, Asia, Latin America and key offshore financial centers.