



MAS Publishes Information Paper for Ethical Practices in Implementation of AI in Banking

On 5 December 2024, the Monetary Authority of Singapore published an [information paper](#) outlining good and ethical practices for Artificial Intelligence (AI) and Generative AI model risk management. The paper is based on the findings of thematic review conducted in mid-2024 that evaluated AI practices across selected banks. Through this paper, MAS discusses the importance of good governance, risk management systems, and development protocols for AI and Generative AI. The authority encouraged all financial institutions to adopt these practices to ensure responsible AI deployment and innovation.

The information paper also elaborates on AI's transformative potential in enhancing operational efficiency, customer engagement, and risk management. However, it also highlights the risks associated with its use, including financial, operational, regulatory, and reputational challenges. The review conducted in mid-2024 taken into account how banks are currently navigating these risks, with an emphasis on governance structures, oversight frameworks, and best practices for managing AI throughout its lifecycle. The AI information paper by MAS puts special attention to Generative AI due to its complexity and the risks of unpredictable behaviours.

The MAS AI Information paper states that a strong governance framework is pivotal for managing the risks associated with AI. The paper details practices such as establishing cross-functional oversight forums to ensure comprehensive risk management across the organisation. These forums aim to align policies and procedures with the evolving nature of AI technologies. MAS recommends that banks establish clear principles to guide the ethical, accountable, and transparent use of AI systems, ensuring alignment with broader organisational values.

The MAS AI Information paper discusses the importance of identifying and managing AI risks through proper systems and processes. Banks are advised by MAS to develop AI inventories to maintain a centralised view of AI usage and dependencies. Such inventories will then help ensure that AI models are only used within their approved scope and also conduct risk materiality assessments for calibrating governance efforts. These risk materiality assessments should consider the impact of AI, its complexity, and the level of reliance on automated systems versus human oversight.

The MAS AI Information paper outlines standards for the development and deployment of AI to mitigate risks, which include adopting data management practices to address biases, ensure fairness, and guarantee data representativeness. The MAS AI Information paper also mandates on validation protocols, which must be com-

prehensive, to ensure that AI models align with their intended objectives before deployment. Post-deployment, banks should continuously monitor AI systems to detect any performance drifts or anomalies, ensuring the models remain reliable and effective over time.

Generative AI

In the MAS AI Information paper, Generative AI is identified as a promising but challenging technology due to its inherent unpredictability and complexity. The paper mandates the need for banks to adopt stricter controls and evaluation protocols for Generative AI, given its ability to process and generate unstructured data, thorough testing is essential to anticipate potential issues. The MAS AI Information paper also provides for adoption of safeguards, such as input and output filters to manage risks like hallucinations and biases. MAS AI Information paper advises banks to focus on use cases that enhance internal efficiency rather than customer-facing applications at this stage.

The MAS AI Information paper, in relation to third-party AI solutions, emphasises the importance of oversight. Banks are advised to include clear contractual terms requiring notification of updates or changes to third-party AI models. Validation and monitoring processes should be in place to ensure these solutions meet the same standards as internally developed AI.

MAS AI Information paper places emphasis on the importance of ongoing monitoring and contingency planning by regular audits and revalidation to ensure AI models continue to operate within acceptable performance thresholds. Banks are advised to establish contingency plans, including mechanisms such as “kill switches” for high-risk scenarios. The MAS AI Information paper recommends version control systems how to manage frequent updates, which will enable the Banks to track changes and ensure accountability throughout the AI lifecycle.

(Source: <https://www.mas.gov.sg/publications/monographs-or-information-paper/2024/artificial-intelligence-model-risk-management>, <https://www.mas.gov.sg/-/media/mas-media-library/publications/monographs-or-information-paper/imd/2024/information-paper-on-ai-risk-management-final.pdf>)

Cayman Islands Monetary Authority Appoints Jessica Ebanks as Head of Securities Supervision Division

The Cayman Islands Monetary Authority has announced the appointment of Ms. Jessica Ebanks as the Head of the Securities Supervision Division, effective from 1 November 2024. MsEbanks began her career at CIMA in 2013 as an Analyst in the Investments & Securities Supervision Division. In 2017 she became the sole Chief Analyst in the newly established Securities Supervision Division and Instrumental in building the Division from its inception. MsEbanks was promoted to Deputy Head in 2020.

MsEbanks holds a Bachelor’s degree in Management and Organisational Studies, specialising in International and Comparative Studies (Globalisation), from the University of Western Ontario. She is a Certified Fraud Examiner and has completed the Canadian Securities Course, Canadian Practices Handbook, and programmes with IOSCO and PIFS-Harvard Law School. She holds an ILM Level 5 qualification in Leadership and Management.

CIMA’s Chief Executive Officer, Mrs. Cindy Scotland, OBE, commented: *“We are proud to announce Ms. Jessica Ebanks’ promotion to Head of the Securities Supervision Division. Her proven track record, deep regulatory knowledge, and commitment to developing high standards within the Division have greatly contributed to the Authority’s success. We look forward to Ms. Ebanks continuing to strengthen our Securities Supervision Division, ensuring its alignment with global best practices.”*

(Source: <https://www.cima.ky/cima-appoints-new-head-of-securities-supervision-division-1>)

Fraudulent Commodity Pools: U.S. CFTC's Legal Action Culminates in Over US\$2 Million Penalty Against Hawaiian Operator

On 5 December 2024, the United States Commodity Futures Trading Commission announced a legal resolution in its enforcement action against Marcus Todd Brisco, a Hawaii-based operator accused of running fraudulent schemes through two commodity pools. The U.S. District Court for the Southern District of Texas issued a **consent order** imposing permanent injunctive relief, civil monetary penalties, and restitution obligations on Brisco.

Marcus Todd Brisco, operating through Yas Castellum LLC and Yas Castellum Financial LLC, solicited funds from investors under the guise of engaging in leveraged or margined foreign exchange (forex) and gold transactions. These promises proved fraudulent as Brisco failed to direct the funds toward trading activities as pledged. Instead, he misappropriated amounts for personal use and transferred funds to other entities. Between October 2020 and January 2023, his actions caused more than US\$1.6 million in losses to pool participants.

The United States Commodity Futures Trading Commission's investigation revealed a series of fraudulent actions by Brisco, including misrepresentations about trading activity, the provision of falsified account statements, and violations of registration requirements.

Between October 2020 and May 2022, Brisco operated a commodity pool through Yas Castellum LLC, soliciting US\$470,700 from at least 43 participants. The funds were not directed toward trading as promised; instead, they were transferred to bank accounts controlled by other entities. Brisco issued false statements about trading profits, further deceiving the investors.

In March 2022, the National Futures Association (NFA) initiated an examination of Yas Castellum LLC, uncovering significant irregularities. Responding to NFA's concerns, Brisco repaid the first pool's participants and announced his departure from the financial services industry. However, in June 2022, he formed Yas Castellum Financial LLC to launch a second fraudulent commodity pool. This scheme, which spanned from June 2022 to January 2023, saw Brisco raise over US\$1.9 million from 66 participants. Again, the funds were misappropriated, including payments to himself for nonexistent trading profits. During the National Futures Association investigation in March 2022, Brisco claimed to have deposited funds with an offshore trading firm. However, repayments to pool participants reportedly came from a **Canadian cryptocurrency business**, which had no clear connection to the claimed trading activities, which indicates that cryptocurrency was likely used as a medium for transferring or disguising the misappropriated funds.

By January 2023, Brisco failed to return more than US\$1.6 million to investors. In January 2023, the United States Commodity Futures Trading Commission filed a complaint against Brisco and several co-defendants. While prior judgments resolved the cases against the other defendants, the November 2024 consent order brought an end to the CFTC's action against Brisco.

Brisco's activities contravened multiple provisions of the United States Commodity Exchange Act and associated regulations, including, Sections 4b(a)(2)(A)-(C) and 4o(1)(A)-(B) of the United States Commodity Exchange Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) and 6o(1)(A)-(B), which prohibit fraudulent solicitation and misappropriation of funds, Sections 4k(2) and 4m(1) of the United States Commodity Exchange Act, 7 U.S.C. §§ 6k(2) and 6m(1), which require proper registration for commodity pool operators and United States Regulations 4.20(a)(1), (b)-(c), and 5.2(b)(1)-(3) under 17 C.F.R. §§ 4.20(a)(1), (b)-(c), and 5.2(b)(1)-(3), which mandate proper fund management practices, including separate accounting for pool funds.

The U.S. District Court for the Southern District of Texas granted comprehensive relief to address the egregious violations committed by Marcus Todd Brisco and his entities. The reliefs are designed to penalise past misconduct, compensate defrauded investors, and prevent future violations of the United States Commodity Exchange Act and related regulations. The court ordered Brisco to pay a civil monetary penalty of US\$350,000 and US\$1.65 million in restitution to compensate the 66 defrauded participants who suffered financial losses due to his schemes.

To prevent Brisco from engaging in similar misconduct, the court imposed permanent trading and registration injunction which prohibit him from trading on or subject to the rules of any registered entity, entering into transactions involving commodity interests, or acting in any capacity requiring registration with the United States Commodity Futures Trading Commission. Brisco is permanently enjoined from further violations of the United States Commodity Exchange Act and associated regulations.

The reliefs also include a mechanism for restitution payments through the National Futures Association, which was appointed as the monitor to oversee the collection and equitable distribution of funds to the affected participants. The court retained jurisdiction to enforce compliance with these orders and to hold Brisco accountable and safeguard the integrity of commodity markets. Collectively, these reliefs aim to restore investor trust, reinforce regulatory standards, and deter future violations.

(Source: <https://www.cftc.gov/PressRoom/PressReleases/9012-24>, <https://www.cftc.gov/media/11591/enfbri-scoconsentorder112224/download>)

US CFTC Issues Compliance Advisory on Use of Artificial Intelligence in Derivatives Markets

On 5 December 2024, the United States Commodity Futures Trading Commission issued an **advisory** concerning the use of artificial intelligence in markets under its jurisdiction. The advisory, released by the Divisions of Clearing and Risk, Data, Market Oversight, and Market Participants, aims to guide registered entities and registrants in maintaining compliance with the United States Commodity Exchange Act and associated regulations while adopting artificial intelligence technologies. This advisory recognises the transformative potential of artificial intelligence in derivatives markets and highlights the responsibilities of regulated entities to integrate this technology without compromising their statutory and regulatory obligations.

The advisory recognises the growing role of artificial intelligence in financial markets and the potential benefits and risks associated with its use. It draws on multiple sources, including public comments, industry engagements, and guidance from United States governmental bodies, such as the Executive Order on Artificial Intelligence issued in 2023. The report emphasises that the recommendations are not exhaustive and that each regulated entity must conduct rigorous assessments to ensure compliance. This advisory does not establish enforceable rights or create new binding rules but serves as a reminder of existing obligations under the regulatory framework.

The advisory outlines the obligations that registered entities and registrants must fulfill when employing artificial intelligence. The advisory states that compliance remains the responsibility of the regulated entity, irrespective of whether artificial intelligence systems are developed internally or procured from third-party service providers. The report stresses the importance of risk assessments, policy updates, and adequate controls to ensure that artificial intelligence systems align with existing regulatory standards.

The advisory addresses the specific obligations of designated contract markets, swap execution facilities, and swap data repositories when adopting artificial intelligence. These entities must ensure that artificial intelligence applications, such as those used for trade matching or market surveillance, uphold the principles of fair and transparent trading. For instance, artificial intelligence tools designed to anticipate trades or optimise resource allocation must preserve the integrity of the price discovery process as required by Core Principle 9 of the United States Commodity Exchange Act. Similarly, artificial intelligence-driven market surveillance systems must effectively detect abusive trading practices, such as wash trading and front-running, without replacing the need for robust human oversight.

The advisory also stresses the importance of system safeguards. Regulated entities must adopt recognised standards and best practices to ensure the reliability, security, and capacity of artificial intelligence systems. This includes measures for cybersecurity, disaster recovery, and performance planning. Material changes to automated systems that could impact their functionality must be reported to the Commodity Futures Trading Commission in advance to maintain compliance with applicable regulations.

Derivatives clearing organisations are expected to adhere to similar principles when incorporating artificial intelligence into their operations. The advisory recognises potential use cases, such as using artificial intelligence to detect cybersecurity vulnerabilities or enhance system reliability. However, these organisations must ensure that their use of artificial intelligence complies with Core Principles I, C, and D of the United States Commodity Exchange Act, which includes responsibilities related to risk management, participant eligibility, and settlement processes.

The advisory also highlights that outsourcing artificial intelligence services does not absolve derivatives clearing organisations of their compliance obligations. Organisations must retain accountability for ensuring that third-party systems meet regulatory standards. Any significant changes to automated systems must be communicated promptly to the Commodity Futures Trading Commission.

The advisory identifies potential applications of artificial intelligence for other regulated entities, such as futures commission merchants, commodity pool operators, commodity trading advisors, and swap dealers. These entities may use artificial intelligence for tasks ranging from risk management to recordkeeping. For example, artificial intelligence systems that calculate initial margin requirements or generate financial disclosures must ensure that such activities comply with relevant provisions of the United States Commodity Exchange Act and United States Commodity Futures Trading Commission regulations.

The advisory elaborates on the importance of customer protection. Futures commission merchants employing artificial intelligence to manage segregated funds must ensure compliance with stringent rules safeguarding customer assets. Any deviation from these standards would constitute a violation of the Commodity Exchange Act and associated regulations. The United States Commodity Futures Trading Commission will monitor developments in artificial intelligence and encourage regulated entities to engage proactively with its staff. The advisory suggests that artificial intelligence will remain a topic of discussion during routine oversight activities, such as examinations, and anticipates that future guidance or regulatory action may be required as the technology evolves.

(Source: <https://www.cftc.gov/csl/24-17/download>, <https://www.cftc.gov/PressRoom/PressReleases/9013-24>)

US CFTC Charges Pastor for \$5.9 Million Crypto Ponzi Scheme

On 9 December 2024, the United States Commodity Futures Trading Commission filed a **complaint** against Francier Obando Pinillo, accusing him of operating a fraudulent cryptocurrency scheme. Pinillo, through his unregistered entities, Solanofi, Solano Capital Investments and Solano Partners LTD, allegedly solicited funds from over 1,500 individuals, including members of his church, misappropriating approximately US\$5.9 million in the process.

The complaint states that Pinillo allegedly used his businesses to promise guaranteed monthly profits of up to 34.9% through purported cryptocurrency trading and staking activities but no such trading took place. Instead, Pinillo misappropriated the funds for personal gain, using falsified account statements to deceive customers into believing their investments were growing exponentially.

Pinillo targeted financially vulnerable and unsophisticated individuals, leveraging his position as a pastor at a Spanish-speaking church in Pasco, Washington. Many of the victims were his congregants, whom he convinced to invest by falsely claiming to run a high-performing, automated cryptocurrency trading platform. To attract more participants, Pinillo added a multilevel marketing (**MLM**) element, offering customers a 15% "referral fee" for recruiting others into the scheme.

During the operation, Pinillo allegedly created an online dashboard that displayed fabricated account balances, showing massive returns on investments. One customer, for example, was led to believe their US\$36,000 investment had grown to over US\$1 million in under a year. In reality, Pinillo transferred over US\$4 million of the funds to private wallets in Colombia and other unrelated accounts. No trading ever occurred, and all customer assets were misappropriated.

When customers began seeking to withdraw their funds, Pinillo offered false explanations. He claimed that technical issues with the Solanofi platform and the bankruptcy of the cryptocurrency exchange FTX had frozen their assets. These claims were unfounded, as no customer assets were ever sent to FTX.

The US CFTC has charged Pinillo with violating Section 6(c)(1) of the United States Commodity Exchange Act and United States Regulation 180.1(a)(1)-(3), which prohibit manipulative and deceptive practices in commodity trading. Pinillo's guaranteed profit claims and lack of registration with the US CFTC represent further violations of federal law.

To address the violations, the US CFTC is seeking a permanent injunction against Pinillo, barring him from trading or soliciting in commodity markets. It also requests civil monetary penalties, full restitution to affected customers, and disgorgement of all ill-gotten gains. Furthermore, the CFTC seeks to impose a lifetime trading ban on Pinillo and his entities.

(Source: <https://www.cftc.gov/PressRoom/PressReleases/9015-24>, <https://www.cftc.gov/media/11626/enffranciaerobandopinillocomplaint120924/download>)

US SEC Orders Morgan Stanley Smith Barney to Address Failures in Safeguarding Client Funds

On 9 December 2024, the United States Securities and Exchange Commission (**US SEC**) issued an **order** instituting administrative and cease and desist proceedings, pursuant to section 15(b) of the United States Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the United States Investment Advisers Act of 1940, making findings, and imposing remedial sanctions and a cease-and-desist order against Morgan Stanley Smith Barney LLC (**MSSB**), alleging serious lapses in its policies and procedures designed to protect client funds. The US SEC's order is issued against the MSSB's failure to detect and prevent the misappropriation of millions of dollars from customer accounts by four financial advisers (**FAs**).

The US SEC found that MSSB failed to adopt and implement effective safeguards, allowing the fraudulent activities of its financial advisers, Michael Carter, Chingyuan "Gary" Chang, Douglas McKelvey, and Jesus Rodriguez, to go undetected. These individuals misused client funds through unauthorised Automated Clearing House (**ACH**) payments and wire transfers, collectively misappropriating millions of dollars over several years. Despite its obligations as a registered investment adviser and broker-dealer, MSSB's internal controls failed to identify and address these red flags.

The fraud reportedly took place between 2015 and 2022, with each FA exploiting weaknesses in MSSB's policies. Carter misappropriated over US\$6 million through unauthorised wire transfers, while McKelvey diverted US\$1.15 million from the accounts of elderly relatives. Chang and Rodriguez used unauthorised ACH payments to transfer funds for personal benefit. Carter misappropriated over US\$6 million, McKelvey US\$1.15 million, Chang US\$58,000, and Rodriguez \$3.6 million. MSSB's inadequate fraud detection systems, implemented in 2015, failed to monitor suspicious patterns, such as transfers from multiple client accounts to a single external account.

MSSB further compounded the issue by not screening ACH payment instructions to detect cases where the beneficiary's name matched that of the financial adviser responsible for the account. This negligence allowed fraud to persist for years, undetected. MSSB's failures came to light only after client complaints and US SEC investigations prompted retroactive reviews of its transactions.

The US SEC has charged MSSB with violating several provisions of United States law, including Section 206(4) and Rule 206(4)-7 of the United States Advisers Act of 1940, which require investment advisers to establish written policies and procedures to safeguard client funds. MSSB is accused of failing to supervise its financial advisers as required under Section 15(b)(4)(E) of the United States Securities Exchange Act of 1934. The antifraud provisions under Section 10(b) and Rule 10b-5 of the United States Exchange Act were also breached due to MSSB's oversight failures.

The US SEC has directed MSSB to cease and desist from further violations of the United States Advisers Act and the United States Exchange Act. The firm must pay a US\$15 million civil penalty and engage an independent compliance consultant to review and enhance its fraud detection systems and supervisory policies. MSSB is required to implement remedial measures, including the regular monitoring of all ACH and wire transactions, and to provide enhanced training to staff to ensure compliance with federal regulations. Furthermore, MSSB must compensate all affected clients and establish a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act to distribute these penalties equitably among victims.

(Source: <https://www.sec.gov/files/litigation/admin/2024/34-101842.pdf>, <https://www.sec.gov/newsroom/press-releases/2024-193>)

ASIC Reinforces Custodial Standards: Insights into the Updated Regulatory Guide 133

On 10 December 2024, the Australian Securities and Investments Commission (**ASIC**) published an updated version of its Regulatory Guide 133, titled *Funds Management and Custodial Services: Holding Assets*. This updated Regulatory Guide 133, provides guidance to asset-holding entities under the Australian financial services (**AFS**) licensing framework. It outlines clear obligations and minimum standards for the custody and management of client assets, with a particular focus on security, operational integrity, and compliance. The guide also addresses the management of emerging asset classes such as crypto-assets, ensuring that custodial practices evolve alongside financial innovation.

ASIC has reissued this regulatory guide to reflect the latest developments and provide updated guidance for asset-holding AFS licensees. The targeted licensees include responsible entities of registered managed investment schemes and licensed providers of custodial services. This latest version of RG 133 supersedes the June 2022 guidance and introduces several revisions, which includes revised references to legislative instruments imposing financial requirements and the introduction of good practices for crypto-asset holders, such as the implementation of information security controls and enhanced risk management processes.

The guide discusses the importance of maintaining an adequate organisational structure to ensure the separation of client assets from other holdings. Custodians are expected to demonstrate staffing capabilities, including adequate training and risk management expertise, and must implement secure systems for asset management. Detailed compliance records must be maintained, evidencing adherence to these standards, with the objective of safeguarding clients' interests and promoting operational transparency.

ASIC has placed particular emphasis on the obligations of entities engaging third-party asset holders. Custodians and responsible entities must ensure that any third-party engaged complies with minimum standards. This includes the establishment of legally enforceable agreements specifying terms for compliance, conflict management, and liability. Retail clients must also be informed about the custodial arrangements in place, with their rights and responsibilities clearly articulated. Custodians are required to monitor the compliance of these third parties on an ongoing basis and take immediate action to rectify any deficiencies.

A revised guide includes detailed provisions for managing crypto-assets. Recognising the unique challenges posed by these digital currencies, the guide mandates measures to mitigate associated risks such as market volatility, cybersecurity threats, and operational vulnerabilities linked to crypto exchanges. Custodians holding crypto-assets must ensure these are segregated from their own holdings, held on trust for clients, and recorded in a manner that is auditable and transparent. Agreements with clients must outline liability provisions and provide full disclosure of the risks and safeguards involved, and independent audits are required to verify compliance with these enhanced standards.

The guide also offers limited relief for custodians managing **omnibus accounts**, allowing for the consolidation of client assets under certain conditions. An omnibus account is a type of financial account that consolidates the holdings of multiple clients into a single account. This account is typically maintained by a financial intermediary, such as a custodian, broker, or asset manager, and is used to streamline the management of assets for multiple clients. Custodians must demonstrate that appropriate safeguards are in place to protect individual client holdings within these accounts. The relief measures are contingent upon strict adherence to trust and segregation requirements, ensuring that client assets remain identifiable and protected at all times.

To further support compliance, the guide details reporting and record-keeping requirements. Custodians must maintain comprehensive documentation of all client assets, including transaction histories, valuations, and compliance records. These records should be retained for a specified duration and made available for audits or client inquiries. Reporting obligations also extend to periodic certifications of compliance and timely communication of any material changes to custodial arrangements.

ASIC has discussed the importance of business continuity planning to ensure custodial services remain operational in the face of disruptions. Custodians must establish and maintain reasonable contingency arrangements to address potential interruptions. Confidentiality is also a central requirement, with custodians expected to protect client information while complying with legal and regulatory disclosure obligations.

ASIC aims to enhance client confidence in custodial services while ensuring that custodians are equipped to manage the complexities of modern financial assets, including crypto-assets.

(Source: <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-133-funds-management-and-custodial-services-holding-assets/>, <https://asic.gov.au/about-asic/news-centre/news-items/asic-reissues-regulatory-guide-133-on-funds-management-and-custodial-services/?altTemplate=betanewsroom>)

US SEC Files Insider Trading Complaint Against Former Comtech CEO Amid Allegations of Misconduct and Law Violations

On 11 December 2024, the United States Securities and Exchange Commission filed a **complaint** against Ken Peterman, the former Chief Executive Officer, chair of the Board, and president of Comtech Telecommunications Corp., in the United States District Court for the Eastern District of New York. The complaint alleges that Peterman engaged in insider trading by selling Comtech stock while in possession of material non-public information about the company's poor financial performance for the second quarter of its fiscal year 2024 (Q2 FY24). These actions violated United States federal securities laws and breached his fiduciary obligations.

The complaint centres on Peterman's sale of Comtech shares prior to the public disclosure of financial losses for Q2 FY24, which resulted in a 25.4% drop in Comtech's stock price. By acting on confidential information obtained through his position at Comtech, Peterman avoided approximately \$12,445 in losses and attempted to avoid further losses by selling additional shares. The US SEC argues that his actions constitute a clear violation of insider trading regulations and corporate governance standards.

Ken Peterman served as Comtech's CEO, chair of the Board, and president from August 2022 until March 2024. In these roles, he had direct access to confidential company information and a fiduciary responsibility to uphold company policies. On 4 March 2024, Peterman attended a Board Audit Committee meeting where he was informed of Comtech's negative earnings for Q2 FY24, including a 12% decline in net sales, from \$151.9 million to \$134.2 million, and a drop in adjusted earnings before interest, taxes, depreciation, and amortisation (EBITDA) from \$18.4 million to \$15.1 million. These results were not yet public. At the time, Comtech had two trading blackouts in effect. The first, a routine quarterly blackout, barred executives from trading until two days after the public release of earnings results. The second, a special blackout tied to confidential projects, had been in effect since October 2023. Despite being aware of these restrictions, Peterman sought to capitalise on insider knowledge to avoid significant losses.

On the evening of 12 March 2024, Peterman was terminated for cause by Comtech's Board following an internal investigation into personal misconduct, which included failure to disclose a relationship with a subordinate and directing the subordinate to complete his mandatory sexual harassment training on his behalf. Hours after his dismissal, Peterman attempted to liquidate 8,241 shares of Comtech stock held in his Compensation Account. He also sought to sell an additional 49,400 shares from another account, circumventing Comtech's internal controls and violating blackout period policies. On 13 March 2024, Comtech publicly announced Peterman's termination. By 9:35 a.m., his Compensation Account shares were sold for \$40,454.54. Days later, on 18 March 2024, Comtech disclosed its Q2 FY24 financial results, missing analyst expectations and causing its stock price to plummet by 25.4%. Peterman's premature sale of shares helped him avoid losses of approximately \$12,445 and potentially much more had his other sale attempt succeeded.

The United States Securities and Exchange Commission alleges that Ken Peterman violated Section 10(b) of the United States Securities Exchange Act of 1934 and United States Rule 10b-5. By using material non-public information to sell shares, he knowingly breached federal securities laws designed to ensure market fairness and transparency. Additionally, Peterman contravened Comtech's internal Standards of Business Conduct, which explicitly prohibited trading during blackout periods or while in possession of non-public information. His actions also constituted a breach of fiduciary duty, given his responsibility to act in the best interests of the company and its shareholders.

The United States Securities and Exchange Commission is seeking multiple penalties against Ken Peterman. First, it is requesting a permanent injunction to bar Peterman from engaging in any future violations of United States federal securities laws. Second, the US SEC is seeking disgorgement of all profits obtained from the trades, amounting to \$40,454.54, along with prejudgment interest. Third, the Commission has requested the imposition of significant civil monetary penalties under Section 21A of the United States Securities Exchange Act. Fourth, the US SEC seeks a lifetime prohibition preventing Peterman from serving as an officer or director of any publicly traded company. Finally, the Commission is asking for any further relief that the court may deem necessary to ensure justice and deter future misconduct.

(Source: <https://www.sec.gov/newsroom/press-releases/2024-195>, <https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-195.pdf>)

US CFTC Orders Five Individuals to Pay Over \$5 Million for Digital Asset Fraud Scheme

On 11 December 2024, the United States Commodity Futures Trading Commission (**US CFTC**) announced that the United States District Court for the Central District of California issued two orders against five individuals involved in a fraudulent digital asset scheme operating under the name Icomtech. The court's **consent order** and **default judgment** require the defendants—Marco A. Ruiz Ochoa, David Carmona, Juan Arellano Parra, Moses Valdez, and David Brend—to collectively pay over \$5 million for defrauding at least 190 investors out of more than \$1 million through false promises of high returns from trading digital assets like Bitcoin.

The legal actions stem from the US CFTC's May 2023 complaint, which charged the defendants with fraud and misappropriation in violation of the United States Commodity Exchange Act (CEA) and related US CFTC regulations. The court found that from August 2018 to December 2019, the defendants engaged in a deceptive scheme that falsely represented to investors that their funds would be used for trading digital asset commodities, offering daily returns between 0.9% and 2.8%, and promising to double investments within eight months. Instead, the defendants misappropriated the funds for personal use and to perpetuate the scheme, leaving many investors—predominantly from Spanish-speaking communities—with significant losses.

The court's decision was grounded in specific provisions of the United States Commodity Exchange Act and US CFTC regulations, aiming to protect market participants from fraudulent practices. Section 6(c)(1) of the Commodity Exchange Act prohibits any manipulative or deceptive device or contrivance in connection with commodity transactions, including swaps and futures contracts. This provision serves as a fundamental anti-fraud measure within the Act. Similarly, CFTC Regulation 180.1(a) extends the prohibition to include the use or attempted use of fraudulent schemes, making untrue or misleading statements, and engaging in deceptive practices. Additionally, Section 13c(a) of the Commodity Exchange Act establishes liability for individuals who aid and abet violations, holding them accountable as principals in fraudulent activity.

In reaching its decision, the court meticulously examined evidence presented by the US CFTC and outlined several critical factors that demonstrated the defendants' violations. The court found that the defendants knowingly made false statements to investors, claiming that their funds would be actively traded in digital asset markets to generate substantial returns. They also omitted critical information, such as the fact that the funds would be misappropriated for personal expenses and commissions, which a reasonable investor would consider significant when making investment decisions. Furthermore, the court determined that the defendants acted with scienter, intending to deceive and defraud their investors, and noted that their coordinated actions supported and facilitated the fraudulent activities of the others.

The orders issued by the court included significant monetary penalties and other relief to address the violations. The default judgment against Carmona, Arellano, Valdez, and Brend required each to pay a civil monetary penalty of \$1 million. They were also held jointly and severally liable with Ruiz Ochoa for restitution totaling \$1,098,920 to compensate the defrauded investors. The consent order against Ruiz Ochoa mandated similar restitution obligations and subjected him to a permanent injunction against future violations. All defendants are now permanently banned from registering with the US CFTC, trading in CFTC-regulated markets, and engaging in activities that violate the Commodity Exchange Act.

The court's reasoning highlighted the severe impact on victims, many of whom lost their entire investments, and the defendants' exploitation of vulnerable communities, particularly Spanish-speaking individuals. By imposing permanent trading and registration bans, the court aimed to protect the integrity of the markets and prevent the defendants from engaging in similar misconduct in the future.

The court's civil orders align with parallel criminal actions pursued by the United States Attorney's Office for the Southern District of New York. In related criminal proceedings, David Carmona pleaded guilty to wire fraud and was sentenced to 10 years in prison, with an order to forfeit over \$329,450. Marco A. Ruiz Ochoa pleaded guilty to wire fraud, receiving a five-year prison sentence and forfeiture of \$914,000. Restitution orders for both remain pending. Juan Arellano Parra pleaded guilty to wire fraud and conspiracy to commit money laundering, with sentencing pending, while David Brend was convicted of wire fraud at trial and sentenced to 10 years in prison and fined \$40,000. The criminal charges against Moses Valdez remain unresolved.

This case underscores the US CFTC's dedication to enforcing federal commodity laws and protecting investors from fraudulent schemes, especially in the rapidly evolving digital asset space. The court's orders serve as a stern warning to those who seek to exploit investors through deceit and manipulation. By holding the defendants accountable through substantial financial penalties and permanent bans, the US CFTC and the judiciary aim to deter similar misconduct and uphold the integrity of the commodity markets.

Through collaborative efforts with federal prosecutors and other regulatory bodies, the US CFTC has demonstrated its commitment to combating financial fraud. Investors are urged to remain vigilant and report suspicious activities to help prevent such schemes from harming additional victims.

(Source: <https://www.cftc.gov/PressRoom/PressReleases/9017-24>, <https://www.cftc.gov/media/11646/enfmarcoaruizochoaorder121024/download>, <https://www.cftc.gov/media/11651/enfdavidcarmonaorder102124/download>)

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