



Lowenstein Sandler's Regulatory Compliance & Dispute Resolution podcast: Regulatory Matters

Episode 4 - Cryptocurrency: The Regulator's Perspective

By [Rachel Maimin](#) and [Christopher Gerold](#)

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Rachel Maimin: Hello and welcome to Regulatory Matters, a podcast devoted to covering the ever-changing regulatory landscape affecting business to today. I'm today's host Rachel Maimin here with Chris Gerold. Chris, who's now one of our partners at Lowenstein, just left his position as chief of the New Jersey Bureau of Securities, position which he held for about four years. Under his leadership the Bureau of Securities filed some of the earliest crypto enforcement actions, and was at the forefront of crypto and DeFi, filing more than 23 crypto and DeFi-related enforcement actions, including cases against BlockFi and Celsius in 2021. Chris rose to national prominence in the emerging crypto and DeFi spaces in 2018 when he led the North American Securities Administrators Associations, otherwise known as NASAA, but not to be confused with the other NASA, Operation Crypto Sweep, as the chair of NASAA's enforcement committee. NASAA members from more than 40 jurisdictions throughout North America participated in this initiative, which resulted in more than 330 inquiries and investigations and at least 85 enforcement actions related to ICOs or cryptocurrency investment products.

As the president, Chris engaged with SEC commissioners and FINRA leadership on various rule-making and policies, including the SEC's Regulation Best Interest. And when the pandemic struck, he led the organization's COVID-19 enforcement task force, consisting of more than 44 state and provincial securities regulators, which initiated more than 250 investigations and enforcement actions against fraudulent investment offerings seeking to profit from the pandemic. So, Chris, you were a regulator who regularly hung out with other regulators, so you have a lot to tell us about today.

Christopher Gerold: Hi, Rachel, thanks for having me, happy to be here. Yes, I do. And I have been hanging out with a lot of regulators over the last four or five years. My colleagues and folks that had my job in states across the country, and in fact, NASAA was an organization which was all of North America. So includes the provinces and territories of Canada and Mexico as well. So really was able to see what regulators in the securities area are doing from all over North America.

Rachel Maimin: So global, not just the United States?

Christopher Gerold: Correct.

Rachel Maimin: Well, let's get into it. I'm curious because I previously had a career in public service. What led you to public service, and in particular to the bureau?

Christopher Gerold: So interestingly enough, I started my career, my legal career, I should say, because prior to law school, I was actually a broker Series 7, Series 63. I had clients, I was a broker for two years after undergrad. Then I went to law school. And when I came out of law school, like so many others, I wasn't sure exactly what I wanted to do, but I wanted to stay in finance, having been in that field before. And my first job was as a deputy attorney general representing the New Jersey Bureau of Securities as an attorney. And so I did that for five years, because of my background, having had licenses and been in the securities industry, I was able to do that and catch on. And I mean, there was a learning curve in the legal aspect of it, but understanding the products and the services and what brokers did, I had already experienced that.

And so starting my career, I was representing the Bureau of Securities, did that for five years, I prosecuted cases on behalf of the agency. We went after people that were violating the securities laws, people committed fraud, Ponzi schemes, other things in that area. And then I went to private practice for seven years, and had the opportunity to go back as the chief of the agency, and I did that in 2017. Now what actually made me go to this field is relatively interesting in that my parents were victims of a Ponzi scheme when [crosstalk 00:04:45] I was in high school. And I could honestly not say whether that led me to what I did for a living as a regulator, I never really thought about it, but it would make sense, at least subconsciously, that that led me there, because I could see the devastating impact of securities fraud on people, including within my own household.

And fortunately my folks at the time were probably in their late '40s and they lost a portion of their nest egg, but they had time to grow it again and didn't impact them long term, but for a lot of people it does. And we see a bunch of that, or I saw a bunch of that as the regulator, seniors being victims, losing life savings, having to make difficult choices cause they lost all their money to a fraudster. So I had a chance to try to remedy some of that doing public service, protecting innocent investors, prosecuting bad actors. And I did that for five years. And it was very rewarding work getting to do that and trying to make a difference.

Rachel Maimin: That's incredible. So you basically have experience as a victim of a crime, in so far as your parents were victims of a crime, and also as a broker. So I guess there's no area of this that you haven't actually been firsthand involved in.

Christopher Gerold: I've seen the financial industry from a bunch of different angles.

Rachel Maimin: Yeah.

Christopher Gerold: And so I guess maybe it's time now for me to become an investor myself.

Rachel Maimin: That's true, I forgot about investor. So was there something about happened with your parents in particular, I know you said it might be subconscious, but do you think that their case was handled the way you would've handled it had you been in charge of the prosecution?

Christopher Gerold: So it's interesting, they were part of a national Ponzi scheme, at the time it was probably the largest Ponzi scheme in history as \$900 million emanated at Massachusetts. The SEC brought a action, it ended up in a receivership. And I do recall my folks getting checks from time to time from that receivership. Interestingly, it was sold through legitimate broker dealers, or at least registered broker dealers. And my recollection is that they did not actually prosecute the broker dealers that sold it, whether it's lack of due diligence. Lack of due diligence is probably what they could have gone after them for. And I think when I was at the state and I had that ability, I did look to broker dealers that sold, whether it was unregistered products or fraudulent products, to make sure that they were doing their job of as gatekeepers before they sold it on their platform. So I don't want to cast stones, and...

Rachel Maimin: You can cast some stones.

Christopher Gerold: Well, because of my age, and I did at one point go back and look at how it was handled and did some research on it when I was older and had a law degree and saw what came out of it, I think I would've looked a little harder at the folks that sold it than they may have.

Rachel Maimin: And having that unique perspective, and I guess maybe even a destiny in public service, what was it like being a broker?

Christopher Gerold: It was interesting, I was 22 at the time, I just graduated college, I didn't know anything, I knew what a stock was, and really had this huge responsibility thrust upon me to try to advise people how they should save for, most times it's retirement, but what they should do with their investing. And it's a very challenging job, and I appreciated that. I mean, there's the sales aspect, but then there's also the analyst aspect. And the industry [has] changed a lot since I was in it, where firms generally have more say in what the broker puts their clients in. And I actually think that's a good thing, because do you really want a 22-year-old who just graduated college, who doesn't know anything, who's never experienced downturn in the economy or loss or what have you, any of the number of things that could come up, picking and choosing stocks for you? So it is a job that is a big responsibility.

I think the folks that take it seriously do well and have long careers and clients that probably become friends. Then I think there are others that don't last in business. I did not last obviously, I did it for two years and then decided I wanted to go to law school. And that's what I did, but it's a challenging job.

Rachel Maimin: Yeah. Well, I'm sure it played a very helpful role when you ended up regulating some of your former colleagues.

Christopher Gerold: Well, it has played a role throughout my career, whether as a regulator, but also in private practice where I'm advising, whether it's broker dealers or individuals who are being investigated by regulators, I know how difficult that job is. And sometimes my clients had no intent and things just went south. In those cases it's easy to sympathize with them, because that could happen, they have a good idea, doesn't work out, and all of a sudden the regulator's looking at them, I could sympathize. So it's played a role throughout my career. It was one of the most challenging jobs I had, back then everything was on the phone. So I got very accustomed to calling 100 or 200 people a day. They used to refer to it as dialing for dollars. I got over any shyness I had at the time, but it wasn't for me long term.

Rachel Maimin: Well, you mentioned in their regulatory scrutiny and catching the attention of regulators. Something that I think is really fascinating about your background is you seem to be interested in the crypto space before it became the hottest topic for every single regulator and prosecutor in the country. How did you begin to focus on that?

Christopher Gerold: So crypto was on state securities regulators going back to as early as 2014 or '15. In fact, even before my time, they identified it as a trend in enforcement, where it was a product, that it was evolving and could be a problem. But when it really jumped onto my radar, again, I have to blame my parents, I'm always blaming them, but it was November, Thanksgiving 2017, my mother, and you've already heard about my parents, how good they are at investing, asked me whether she should be buying crypto, whether she should be buying Bitcoin or not. And at the time I had just become the chief of the Bureau of Securities. And I said, "If my mother's asking me if she should buy this product, there might be a problem here." And by Christmas she said, "Chris, I really think we should be buying it, people are getting rich."

At the time it just got up to the level of about \$20,000 per Bitcoin. And very shortly thereafter, we brought our first case, and we started looking around, started talking to my colleagues in other jurisdictions. And we came to realize, like many, historically whenever a product or commodity becomes all the rage, we saw it with the dot-com bubble, we saw it with gold when gold was up at \$2,000 ounce, we saw it with oil when it was trading around \$150 a barrel, what happens is the product is on the front page, and then out come bad actors to try to monetize that. And so we brought our first case against the Steven Seagal-promoted, it was called Bitcoiin with two eyes for instead of Bitcoin, Bitcoiin. We brought that in the late winter of 2018, it was one of our first cases, it made national headlines because of the celebrity associated with it.

After that it snowballed because the fraudulent ICO, initial coin offering, market was all the rage at the time. And as a regulator, we saw there were problems, there were fraudsters out there. And so we took the initiative, I say we, myself, my office in New Jersey, and we brought our first case. And other jurisdictions reached out to me, and we put a task force together. And we started looking at all of these different websites that were promoting different cryptocurrencies and ICO offerings and alike. And really it was to stop those that were doing it, but it was also to raise awareness. I'm a firm believer, at least in my old role, a good enforcement case is better than a lot of investment education. If you could get it in the newspapers, people will read it

and hopefully take notice that that's an area they should have heightened due diligence or be suspect of.

Christopher Gerold: And we did exactly that, we brought a number of cases, New Jersey did. We partnered with my colleagues in other jurisdictions. I was the head of NASAA's enforcement committee. So we put a multi-jurisdictional task force together. And we went out and enforced and issued 100s of investigations and enforcement actions, became known as Operation Crypto Sweep. And from then on, we were off and running. And so my phone would ring from colleagues in other jurisdictions, federal counterparts would reach out, and start coordinating and bringing more actions in that space.

Rachel Maimin: Anything about crypto inherently, other than the fact that you can disguise the ultimate owner and it prevents people from really following a paper trail, is there anything about crypto other than that that makes it a particularly fertile place for fraudsters?

Christopher Gerold: Well, I certainly don't want to say all crypto is bad, I think crypto does have very legitimate and a lot of promise. Unfortunately, early on we saw a lot of fraudsters come out and try to capitalize on that. But yeah, it does. I mean, the transactions are instantaneous, it has lower fees in a lot of cases, it can be used in a lot of good ways. And, well, oftentimes crypto and blockchain are confused. Cryptocurrency's on a blockchain, blockchain is the technology. And so the technology itself has a lot of potential uses, and we're seeing more of them now and we're seeing them evolve, and it's really an area that has a lot of promise. The best comparison I heard was, folks used to say, "the Internet's going to change the world." They didn't know how, but it was going to change the world. And we're seeing that same type of thinking and evolving in the crypto and blockchain space, along with DeFi, as you mentioned earlier, decentralized finance.

Rachel Maimin: Well, so obviously promise and the opportunity for positive transactions to take place in the crypto space, but if a company is considering getting into it right now, can you do it without a massive regulatory risk, given all the focus on the industry?

Christopher Gerold: So it depends what area of they're going into. Obviously you still need a good idea, you can't just go out and say, "We're a crypto company." You have to have an idea, you have to provide some service, there has to be something tangible behind it. And comparing it to the dot-com bubble, if you remember back in '99, if you had a company, you put .com at the end of it and all of a sudden your stock would go way up. And now 20 years later, people realize you have to have a service. And the people or companies that were winners early on doesn't mean they're going to be winners later on. And we see it with AOL, if you remember AOL-

Rachel Maimin: I seem to remember AOL, yes.

Christopher Gerold: ... or Netscape, or those early, early companies that were all the rage. Yahoo, it's still around, but it's not what it once was. And now we have these other companies, Google and alike. So there are lot of opportunities with blockchain and crypto. We're seeing a lot of money going into that space, a

lot of talent, a lot of smart people going into that space, and it's evolving. It's still in its infancy in my opinion. So you talked about regulatory risk. There is a lot of regulatory risk in that space. Keep in mind, I was the chief of the Bureau of Securities, if it wasn't a security and wasn't investment advice, it was outside of my lane. And so same goes for the SEC. And then there are others, the CFTC is in there, is it a commodity? Is it a currency? You have the Fed, you have the White House weighing in. So there's a lot of regulation to come, and being in it early, even before the regulations, there is regulatory risk.

Rachel Maimin: Well, now that you are on the other side and you're able to advise companies, having had this perspective of focusing on their industry, what do you think is the number one most important thing for a company considering getting into the crypto space to take into account? What's the biggest compliance problem that you've seen that you think needs to be dealt with right away?

Christopher Gerold: Right now, it's the absence of regulation, that's the problem? We've seen a lot of enforcement cases, both at the federal level and at the state level. There are very few state jurisdictions right now that have anything specific to blockchain, crypto, crypto exchanges. New York has a BitLicense, that's been around for a while. Federal government's talking about coming out with regulations, you have the Congress talking about it. So the number one risk is regulatory risk. Now, how do you minimize that when you don't have regulations necessarily to follow? Well, you comply with the ones you can comply with, AML for instance, and then you do your best to build whatever product you're building, or company you're building, to think about what regulators are going to be concerned with and try to reduce those risks.

And I think for companies in that space, having attorneys advise them, that have that knowledge and experience to anticipate what regulators might be looking at is very important, and then build that company's, the internal compliance in anticipation of that, or what regulators might be looking at or will look at in the future. You also want to make sure you're protecting your clients, and making sure to the best you can, that they don't become victims of fraud or hacks, or any number of things that can arise in this space.

Rachel Maimin: You mentioned AML, and that's definitely an area where there's been a lot of discussion by regulators, and there's some more understanding of what is expected of companies in that area. In your experience, what's the thing companies make the biggest mistake in AML compliance programs, what's their biggest thing that they're missing or doing wrong?

Christopher Gerold: Well, we're seeing a lot of companies starting to do it right, know your customer, I say AML, reporting AML issues when they occur, making sure you have proper money-transmitter licenses which are issued by the states. And so we're seeing many companies, starting company compliance where they hadn't before. And I think for companies to succeed, they're going to have to stay on top of that, they're going to have to make sure that they're doing what they can now to anticipate what the issues might be on later on, but certainly protecting their own clients is really a big one. When I was on the other side, we used to get, and they weren't really even in our

jurisdiction, but we would get individuals calling and filing complaints with state government, with the Bureau of Securities about its customer service.

Christopher Gerold: And it's interesting, I say that and I mention it because that will put a company on a regulator's radar. If you get five calls about the same company and their customer service, and my money's tied up, or my crypto or my Bitcoin's tied up and I can't get an answer from them, and it's been three or four weeks, immediately the antennas are going up, "All right, what is this company doing wrong?" Now, it might just be that they grew too quickly, they're having growing pains, they don't have enough customer support, but all of a sudden they have regulators looking at them. And that's something that's avoidable. It's very interesting what triggers regulators to look at companies, and something like that can. And so companies have to be mindful of that.

Rachel Maimin: So in that regard, one of your jobs in the private sector is going to be protecting companies and keeping your eye on what's coming in the future. Do you have any predictions about what's going to happen in terms of the regulation of cryptocurrency? I know regulation is needed, what do you think it's going to be, at least in the near term?

Christopher Gerold: So I think we're going to see a lot more enforcement actions. We're going to see a very, very active Securities and Exchange Commission. As you know, I worked with the former director of the SEC enforcement, he was the attorney general in New Jersey, I worked with him for four years, and then he went down to Washington to become the director of enforcement at the SEC. I anticipate the SEC to be extremely active in enforcement of crypto that crosses into their lane, or DeFi. And then I would also expect the CFTC, now that they have leadership, their chairperson was confirmed just before the holidays, I expect them to really be ramping up enforcement. And then I think Chairman Gensler at the SEC is going to be coming out with rules in that space. The SEC is taking criticism from the industry that they are regulating by enforcement. And I think we're going to see a lot more coming out on the rule-making side.

I also do anticipate that Congress is going to act at some point and change statutes, whether it means giving more authority to the SEC or CFTC, or coming out with something different, but that's certainly something that the industry has to keep its eye on, what's going on in Washington.

Rachel Maimin: I'll definitely be looking to you when those changes happen, for your viewpoints and how companies can best implement those changes to stay in compliance with these ever-changing laws.

Christopher Gerold: It's an exciting and evolving space. And I'm excited for that opportunity to advise companies and make sure that they don't end up in some regulator's crosshairs.

Rachel Maimin: Well, I agree, we share the same goal. Thank you so much, Chris, for being here with us today and the time to tell us about your fascinating intro into public service, and all of your predictions and [inaudible 00:23:06] about

what's going on in the crypto space right now. We're looking forward to hearing your insights going forward.

Kevin Iredell:

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