

# GOODWIN Q+A

## WITH GRANT FONDO



Grant Fondo, founder and co-chair of Goodwin's Digital Currency + Blockchain Technology practice, recently sat down to discuss some trends he's seeing in the industry as well as the climate in the government investigations and enforcement areas. Fondo is head of the Litigation Department for Goodwin's California office, a partner in the firm's Securities Litigation & White Collar Defense group and in its Privacy & Cybersecurity practice. He's also an experienced federal prosecutor and former Assistant U.S. Attorney in the Northern District of California.

Here Fondo shares some insights on the digital currency and Blockchain space and how stressed out he gets watching his son pitch in baseball games.

### **What cases are you watching now, and why?**

Not a particular case but I would say what we're following is SEC enforcement actions and consent orders relating to digital currency. It's still so new that you're looking at anything that comes out.

### **How does your practice break out between white collar work and digital currency?**

I have a pretty equal mix of white collar matters and digital currency. Now they overlap a lot, so it's sort of like a Venn diagram. But I also have plenty of more traditional white collar matters including alleged insider trading, tax fraud, health care fraud and securities fraud. On the digital currency side, I'm looking at SEC enforcement actions, criminal matters and advising clients on avoiding regulatory problems.

### **What do you think will be drawing you to trial the most in the white collar space?**

It's always hard to predict which cases will go to trial in the white collar area. It's so individual defendant focused, it depends on resources, how close a call it is, whether resolution is truly an option. It also depends on DOJ enforcement actions. If they're particularly

aggressive in an area, it's more likely it will go to trial versus an area they're less focused on and likely more reasonable then there's probably a better opportunity for resolution.

### **What's your most memorable case?**

One of my partners, Derek Cohen, and I tried an insider trading case about two years ago in the Central District of California and received a complete acquittal. He was a young man at the very early stages of his career, the odds were clearly stacked against him and we were able to help him and allow him to continue on with his career and his life. And also, the government doesn't lose these cases very often. So to be able to succeed in that front it was very gratifying.

### **Are there any trends in the white collar space that are of particular interest to you right now?**

In the digital currency space, for me in particular, there's still a lot of activity that will continue. There's always insider trading cases, and I think that will continue. In addition, health care fraud continues to be a focus of the government. Here in the Northern District of California, the new U.S. Attorney has strongly indicated that we can expect more white collar matters.

**What is the biggest regulatory or legal issue facing the white collar industry?**

The biggest are in the digital currency space where there's still a lot of regulatory uncertainty. It's definitely more certain than it was two years ago, but that is not saying a lot. I think this technology and industry are still evolving so quickly that it is difficult for regulators and the courts to keep up with it. Consequently, you are always at the leading edge of it.

**Has activity in the digital currency space slowed as the regulatory landscape comes into focus?**

There's no question that the increased SEC and state securities division activity has decreased and changed the ICO (initial coin offering) market quite dramatically. In the U.S., it has essentially shut it down in its historic form. What we've seen is a transformation from "utility" tokens to securities offerings, and efforts at pure decentralization.

Sort of like the internet 20 years ago, the industry is maturing and pivoting and you are seeing bigger institutions much more focused on Blockchain technology. Their regulatory issues tend to be different than the small startups that we saw two or three years ago in that they are a little less securities/SEC-focused and more focused on activities that implicate FinCEN. Larger institutions tend to understand the regulatory environments much better and have people who deal in that world on a day-to-day basis, so it does allow them to better understand the risks and where the limits are.

**Do you foresee an increase or decrease in regulation moving forward within this space?**

I think you will continue to see more guidance from enforcement actions as well as statements by the SEC through no-action letters and otherwise. I think you'll see that from other agencies like FinCEN and CFTC as well. I don't think you'll see a lot more legislative activity in this area. There hasn't been much anyways, and I don't expect much in the future either. I think it's going to be more about bending the technology around the existing regulations.

**How has the Trump administration impacted the government's approach in white collar cases?**

It's hard to say. I think there's a sense that there are less actions brought. But I don't know. There's a new U.S. Attorney in my district, and I think he's signaled an increased aggressiveness. But I think it's too early to tell in the Northern District of California.

**How has your previous experience as a prosecutor helped to shape your role at Goodwin?**

When I was in private practice before I joined the U.S. Attorney's Office I represented a lot of technology companies. So that combined with my experience at the U.S. Attorney's Office prosecuting criminal cases has allowed me to expand and explore beyond the typical white collar practice. The intersect between my technology interests and the white collar interest allowed me to get into that space with a level of expertise, and be one of the early lawyers in the crypto world. And in Silicon Valley there are a lot of technology companies that are working on the cutting edge and there's a lot of intersect with the government, so having that background is helpful to clients.

**Tell me about your best day at Goodwin?**

One that sticks out is the first call I ever received from one of my AUSA friends relating to a referral that was an internal investigation relating to potential criminal charges, and it was gratifying to get that call. It felt like, OK, I'm on my way now.

**What makes Goodwin different from other firms?**

I think our tech background. From a white collar perspective, we have a very strong white collar group that works well with our tech, our financial institutions group and life sciences as well. I also think we enjoy not just representing corporations, but also representing individual defendants. Those can be really interesting and rewarding.

**How do you spend your time when not at work?**

Coaching my oldest son's baseball team, attending my other son's games, and fly fishing. My oldest son's a pretty good pitcher now. It still stresses me out watching him though even as a coach because your kid's on the mound. There's nothing you can do. You can go out there and try to calm them down, but at the end of the day, it's a really hard thing to do. I think pitching is the hardest thing in sports.

**Favorite vacation spot?**

Anywhere where there's fly fishing. Idaho, Montana, but also offshore as well.

**Favorite movie?**

The Hangover is in the top five.

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