



Blockchain and Digital Assets News and Trends

[Achieving Digital Transformation and Securing Digital Assets](#)

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To remain competitive, companies find themselves increasing their efforts to digitally transform their businesses by developing new offerings based on emerging technologies and integrating these technologies into existing product and service offerings.

This is our sixth monthly bulletin, aiming to help companies identify important and significant legal developments governing the use and acceptance of blockchain technology, smart contracts and digital assets.

While the use cases for blockchain technology are vast, from copyright protection to voting, most of the current adoption is in the financial services section and the focus of this bulletin will be primarily on the use of blockchain and or smart contracts in that sector. With respect to digital assets, we have organized our approach to this topic by discussing it in terms of traditional asset type or function (although the types and functions may overlap), that is, digital assets as:

- Securities
- Virtual currencies
- Commodities

- Deposits, accounts, intangibles
- Negotiable instruments
- Electronic chattel paper
- Digitized assets

Digital assets can themselves be assets or instead can reflect the ownership of an underlying asset. For example, electronic records that are the equivalents of negotiable instruments and electronic chattel paper would be digital assets, as would an electronic recording of a security interest in the underlying asset, such as recording title to real or personal property and the use of tokens to represent revenue streams from otherwise illiquid assets such as patents and commercial real estate (sometimes referred to as a "tokenized" or digitized asset).

In addition to reporting on the law and regulation governing blockchain, smart contracts and digital assets, this bulletin will also report on the legal developments to support the infrastructure and ecosystems enabling the use and acceptance of these new technologies.

Each issue will feature in-depth insight on a timely and important current topic. In this issue, we take a look at one state's efforts to create a legal framework for using blockchain and transacting in digital assets.

For related information regarding digital transformation, please see our monthly bulletin, *eSignature and ePayment News and Trends*.

INSIGHT

Wyoming aims to provide legal framework for using blockchain and transacting in digital assets

By Liz Caires

In early 2019, the Wyoming legislature enacted a flurry of laws aimed at establishing the state as a haven for businesses and investors that focus on blockchain and digital assets. These laws are designed to provide a legal framework for Wyoming's adoption and use of blockchain, and for transactions in digital assets in the state. about the most notable of these laws. Find out more.

FEDERAL DEVELOPMENTS

Securities

- **SEC approves Securitize digital securities platform as a transfer agent.** On August 21, the SEC reportedly approved the registration application of Securitize, a digital securities platform, as a transfer agent. The registration allows Securitize to manage and store records of changes in the ownership of digital securities. Securitize claims to be the first and only SEC-registered transfer agent with a working blockchain protocol, active issuers, and integrations that allow digital securities enabled by its protocol to be traded on SEC-registered alternative trading systems (ATS), including Open Finance Network, tZERO, and Sharespost.
- **FINRA approves membership of blockchain-based securities trading platform.** On August 20, the Financial Industry Regulatory Authority (FINRA) approved the membership application of IOI Capital and Markets, which plans to act as a placement agent for privately placed digital securities on a permissioned Hyperledger Fabric blockchain. IOI can now issue securities and potentially enter the secondary trading business. IOI was earlier registered by the SEC on August 7 as a broker-dealer.

Virtual currency

- **Secretary of State asserts virtual currencies should be regulated.** In an interview on *CNBC Squawk Box* on August 20, Secretary of State Mike Pompeo discussed terrorist funding and money laundering using cryptocurrency, stating that the United States "should use the same framework that we use to regulate all other electronic financial transactions today.... The same set of requirements that apply to things flowing through

SWIFT or flowing through our financial institutions ought to apply to those transactions as well.”

- **Senate Banking Committee receives testimony on impact of cryptocurrency on human trafficking.** On September 3, David Murray, Vice President for Product Development and Services of the Financial Integrity Network and a former director of the Office of Illicit Finance at the Treasury Department, provided written testimony to the Senate Committee on Banking, Housing, and Urban Affairs’ hearing, “Human Trafficking and its Intersection with the Financial System.” Mr. Murray testified that “Congress should create a new class of financial institutions” known as “virtual asset transaction validators” under the Bank Secrecy Act to supervise virtual asset service providers and virtual currency transactions.

Commodities

- **Proposed amendment to commodities law to regulate virtual currencies.** On September 6, Representative Sean Patrick Maloney (D-NY) introduced HR4234, which adds a definition of “virtual currency” to the Commodities Exchange Act and requires spot market platforms to provide to boards of trade (and the Commodity Futures Trading Commission) access to trade data for contracts and swaps related to virtual currencies.

Generally

- **NDAA bills address implications of blockchain and virtual currency.** HR2500, the House version of the National Defense Authorization Act (NDAA) for Fiscal Year 2020, passed the House and was received in the Senate on September 10. The House bill designates the Under Secretary of Defense for Research and Engineering to brief the Congressional defense committees on the potential use of blockchain technology in defense applications. SB1790, the Senate version of the NDAA, passed the Senate and was received in the House on September 10. The Senate bill directs the Director of National Intelligence, in consultation with the Secretary of the Treasury, to submit to Congress a report on the potential exploitation of virtual currencies by terrorist actors.

STATE DEVELOPMENTS

Blockchain

- **Colorado blockchain working group publishes findings.** The Colorado Governor’s Office of Information Technology announced on August 29 that the Colorado Council for the Advancement of Blockchain Technology Use has published its final report, which discusses how blockchain solutions can be implemented to serve the state. The Council identified as priorities: 1) providing guidance on money transmission laws; 2) establishing a “FinTech Point of Contact” to answer regulatory questions for FinTech companies; 3) exploring blockchain-based voting; 4) investigating any need for regulations or laws on tax issues; 5) conducting a blockchain and banking roundtable; and 6) collecting a survey on businesses’ work with blockchain.
- **Illinois adopts Blockchain Business Development Act.** On August 8, Illinois Governor JB Pritzker signed into law HB 2540, which provides for the creation and regulation of blockchain-based limited liability companies as businesses that utilize blockchain technology for a material portion of their business activities. It also provides for various blockchain studies and reports and requires the Department of Commerce and Economic Opportunity to incorporate topics concerning blockchain technology and financial technology into business support programs, events, and activities. The new law takes effect in June 2020.
- **Illinois enables smart contracts using blockchain.** The Illinois governor also signed the Blockchain Technology Act, HB3575, on August 23, providing for the effectiveness and enforceability of smart contracts, records, and signatures maintained using blockchain technology, and sets certain limitations to the use of blockchain technology. The new law takes effect on January 1, 2020.
- **Los Angeles sponsors contest for blockchain pilot project in voting.** Los Angeles is pairing with a venture capital firm to offer \$50,000 to the company that wins a contest soliciting ideas for using blockchain technology to increase sustainability and access to democracy, the city announced Monday. The city’s Information Technology Agency and Office of Budget and Information will award a \$25,000 contract to the blockchain startup that has the best idea for a pilot program to increase environmental sustainability, create an online voting platform or secure residents’ identifications. The contract will be matched by a \$25,000 prize from Goren Holm Ventures, which funds blockchain startups. The contest, modeled after the popular entrepreneurship game show *Shark Tank*, is set to take place at CIS, a major blockchain conference in Southern California, on October 15.

Virtual currency

- **NY DFS authorizes trading of two stablecoins.** On September 5, the New York Department of Financial Services announced it has authorized Paxos Trust Company LLC to offer a gold-backed virtual currency, the first such virtual currency authorized by DFS, as well as BUSD, a virtual currency pegged to the US dollar. In total, DFS has approved three asset-backed tokens issued by Paxos: Paxos Standard (PAX), PAX Gold (PAXG), and BUSD.

FinTech

- **Court dismisses CSBS lawsuit against OCC FinTech charter.** On September 3, the US District Court for the District of Columbia dismissed the Conference of State Bank Supervisors' (CSBS) second lawsuit against the Office of the Comptroller of the Currency that challenged the OCC's decision to accept applications for a Special Purpose National Bank Charter for FinTech companies. The court dismissed the case for a second time due to lack of standing: no FinTech firm has submitted an application for the FinTech charter. The case is *Conference of State Bank Supervisors v. Otting, et. al.*, case number 1:18-cv-02449.

INDUSTRY DEVELOPMENTS

- **Chamber of Digital Commerce publishes third and fourth reports on "Understanding Digital Tokens" 2nd edition.** On August 21, the Chamber of Digital Commerce released its third report, "Considerations and Guidelines for Consumer Protection," included in the second edition of its series on "Understanding Digital Tokens." In the consumer protection segment, the Chamber identifies those circumstances most likely to result in the application of consumer protection laws to activities involving digital tokens. The Chamber also describes the source and scope of federal and state consumer protection authority and provide guidelines to help token sponsors and token trading platforms avoid running afoul of consumer protection laws. On September 11, the Chamber released its fourth report, "Guidelines for Anti-Money Laundering Compliance and Combatting the Financing of Terrorism." In this segment of the second edition of the series, the Chamber discusses AML guidelines and considerations designed to assist the industry to detect and deter illicit activity by, among other things, setting out the rules and regulations that certain categories of businesses must follow with respect to establishing formal anti-money laundering policies and practices, and establishing a set of guidelines for token sponsors and token trading platforms to consider when crafting AML compliance programs. The first two reports of the second edition have already been published: "Considerations and Guidelines for Securities and Non-Securities Tokens" and "Market Overviews and Trends in Token Project Fundraising Events." This second edition serves as a follow-on to the Chamber's initial report, released in 2018.
- **Former CFTC chairman joins Chamber of Digital Commerce board of advisors.** The Chamber of Digital Commerce has announced that the Honorable J. Christopher Giancarlo has joined its board of advisors. During Giancarlo's tenure as chairman of the US CFTC, the agency published primers on virtual currencies and smart contracts, and Giancarlo called for a "Do No Harm" regulatory approach towards blockchain technology.
- **Blockchain Association seeks participation in Open Finance Working Group.** On September 5, The Blockchain Association announced the launch of the Open Finance Working Group. Open to members of the Association and chaired by Jason Somensatto of Ox, the mission of the Open Finance Working Group will be to facilitate discussion among industry participants, educate policymakers, and propose public policy solutions on issues related to the decentralized finance (DeFi) community.

ENFORCEMENT ACTIONS

FEDERAL

Virtual Currency

- **FTC settles charges against alleged crypto pyramid scheme promoters.** The FTC announced on August 22 that it settled charges against four promoters of crypto multi-level marketing schemes, resolving a federal trial in the District Court for the Southern District of Florida. Thomas Dluca, Eric Pinkston, Louis Gatto and Scott Chandler collectively will pay a total of just over \$500,000 in restitution and have been barred from operating or participating in other such fraudulent investment schemes. The four men operated under the corporate names of Bitcoin Funding Team, My7Network and JetCoin, promoting their crypto investment schemes by

misrepresenting potential earnings using social media and YouTube. Dluca is required to pay \$453,932, Chandler must pay \$31,000 and Pinkston's judgment of \$461,035 will be suspended upon payment of \$29,491. Gatto was not ordered to pay any fines.

- **DOJ settles charges against money transmitter.** The US DOJ announced on August 23 that it has charged Kunal Kalra (a/k/a "Kumar," "shecklemayne," and "coinman") for operating an unlicensed money transmitting business and laundering of monetary instruments, among other things. Kalra pled guilty to running an unlicensed bitcoin exchange for more than two years, exchanging up to \$25 million in cash and virtual currency for individuals, among them Darknet drug dealers and other criminals, some of whom used his Bitcoin kiosk. Law enforcement seized \$889,000 from Kalra's bank accounts and 54.3 Bitcoin and other virtual currencies. This is believed to be the first federal criminal case charging an unlicensed money remitting business that used a Bitcoin kiosk.

STATE

Virtual currency

- **SEC charges company and founders with defrauding investors in unregistered offering and operating unregistered digital asset exchange.** On August 29, the SEC announced settled charges with Bitqyck Inc. and its founders, who allegedly defrauded investors in securities offerings of digital assets Bitqy and BitqyM, and operated an unregistered exchange to permit trading in Bitqy. According to the SEC's complaint, Bitqyck and its founders created and sold Bitqy and BitqyM to over 13,000 investors in unregistered securities offerings. The offerings raised more than \$13 million and the investors allegedly lost collectively more than two-thirds of their investment. The founders also misrepresented a daily deals platform using Bitqy as a global online marketplace, and falsely claimed that each Bitqy token provided fractional shares of Bitqyck stock through a "smart contract." According to the complaint, the defendants falsely told investors that BitqyM tokens provided an interest in a Bitqyck cryptocurrency mining facility powered by below-market rate electricity when, in fact, Bitqyck did not have access to discounted electricity and didn't own any mining facilities. The SEC sought permanent injunctions, return of allegedly ill-gotten gains plus interest, and civil money penalties. The defendants, without admitting or denying the allegations, consented to final judgments agreeing to the injunctive relief. Bitqyck consented to paying disgorgement, prejudgment interest and a civil penalty of \$8,375,617 while each founder consented to the entry of an order that each pay disgorgement, prejudgment interest and a civil penalty of \$890,254 and \$850,022 respectively.
- **SEC charges ICO research and rating provider with failure to disclose that it was paid to tout digital assets.** On August 20, the SEC announced that ICO Rating, which produced research reports and ratings of blockchain-based digital assets and published them on its website and on social media, had failed to disclose that it received payments from issuers for publicizing their digital asset securities offerings. ICO Rating had billed itself as "a rating agency that issues independent analytical research" regarding digital assets. The SEC's order found that ICO Rating violated the anti-touting provisions of Securities Act Section 17(b) and ICO Rating agreed to cease and desist from any future violations of those provisions, to pay disgorgement and prejudgment interest of \$106,998, as well as a civil penalty of \$162,000.
- **SEC freezes \$8 million in assets in alleged fraudulent token offering and manipulation scheme.** On August 13, the SEC announced fraud charges against Reginald Middleton and two entities he controlled for allegedly engaging in a fraudulent scheme to sell digital securities to investors and to manipulate the market for those securities. On August 12, the US District Court for the Eastern District of New York ordered an emergency freeze to preserve at least \$8 million of the \$14.8 million the defendants raised in 2017 and 2018 in a digital securities offering. The SEC's complaint alleged that Middleton, Veritaseum Inc. and Veritaseum LLC, marketed and sold securities called "veri tokens" on the Internet, inducing retail investors to invest based on multiple material misrepresentations and omissions. The complaint further alleged that the individual manipulated the price of veri tokens trading on an unregistered digital asset platform and that he moved a significant amount of investor assets and then dissipated a portion of them by transferring them to his personal account.
- **Colorado man sentenced to jail time for laundering Bitcoin.** On August 23, US Customs and Immigration Enforcement announced that an Australian national living in Colorado will serve a year in prison followed by an additional year of supervised release for attempting to hide illicit proceeds by converting them to Bitcoin. Emilio Testa, 32, began conducting illegal money exchanges with undercover law enforcement officers in 2016, telling

them he wanted to convert US dollars to Bitcoin because "he preferred not to use banks or deal with taxes," according to a press release. In early 2018, Testa contacted an undercover agent about converting US dollars gained from narcotics deals into Bitcoin. He laundered more drug money into Bitcoin later that year, the government said. "Criminals may be sophisticated enough to use cryptocurrency but they're not smart enough to stay out of jail, as this conviction shows," said Steven Cagen, the special agent in charge of the Denver office of Immigration and Customs Enforcement's Homeland Security Investigations team, in a statement. "Our agents will continue to shine a light on criminals who use the dark web and Bitcoin to try and conceal their illegal activity," Cagen said. Kevin Caramucci, who leads the Criminal Investigations division at the IRS, which also helped gather evidence on Testa, said, "Investigating cyber-enabled schemes is a top priority," adding: "This sentence shows those choosing to conduct illegal activities, including laundering narcotics proceeds, on the dark web are not hidden from law enforcement's radar."

Recent Publications

M. Tank and D. Whitaker, *Law of Electronic Signatures, 2019 Edition*

Upcoming Events

eSignRecords2019, November 11-13, 2019, Orlando, Florida. The agenda of the Electronic Signatures and Records Association Annual Conference includes discussion of "Blockchain: Beyond Cryptocurrency."

Trending

SEC proposed to modernize certain rules: transitioning from a prescriptive to a principles-based approach?

More from DLA Piper

DLA Piper is pleased to announce the release of a special report, "Cryptocurrency and its impact on insolvency and restructuring," prepared on behalf of INSOL International. Among its findings: the rise in the use of cryptocurrencies has begun to create difficulties for the administration of bankruptcy cases.

In case you missed it

The August 2019 issue of *eSignature and ePayment News and Trends*

Read this next

DLA Piper discusses tokenization in real estate in the latest installment of our new series, *PropTech in the United States – where we're heading*.

DLA Piper has released an analysis of the July 31 FCA policy statement PS19/22: Guidance on Cryptoassets, which sets out the FCA's final guidance on whether dealings involving cryptoassets require authorisation under FSMA.

Effective January 1, 2020, a game-changing privacy law will go into effect in California, the California Consumer Privacy Act of 2018. The CCPA will have profound implications for businesses that collect personal information about persons in California, even if the business is not based in the state. Find out more on our CCPA focus page.

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