



Blockchain and Digital Assets News and Trends

BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS

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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 fifth monthly bulletin for 2020, 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 review California Assembly Bill 2150, which proposes limits on the application of securities laws to tokens. Additionally, we discuss the recent ruling of France's Court of Nanterre holding that bitcoins are a consumable, fungible intangible asset.

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

INSIGHT

[California bill proposes limits on application of securities laws to tokens](#)

By Mark Radcliffe and Nick Pullman

California Assembly Bill 2150 (AB 2150), "Corporate securities: exception: digital assets," would amend Section 25019 of the Corporations Code to provide a safe harbor for digital assets that have

characteristics that take the asset outside the definition of an investment contract. California is considered a pioneer in the technology space, and the successful passage of AB 2150 may lead additional states and even the federal government to examine the regulatory regime of digital assets. [Read more.](#)

French court clarifies the nature of bitcoins: a consumable, fungible intangible asset

By Sébastien Praicheux and Célestine Barthout

France's first instance commercial Court of Nanterre, which has jurisdiction over many banks and major corporations, has issued a remarkable and highly publicized ruling involving the characterization of the nature of bitcoins under French law, determining that all bitcoins are fungible – freely exchangeable or replaceable with each other. [Read more.](#)

FEDERAL DEVELOPMENTS

Commodities

- **CFTC designates bitcoin derivatives exchange as a contract market.** On April 20, the US Commodity Futures Trading Commission (CFTC) announced it issued an Order of Designation to Bitnomial Exchange, LLC, approving Bitnomial as a designated contract market (DCM). Bitnomial is a bitcoin derivatives exchange, now permitted to trade in bitcoin futures and options.

Virtual currency

- **FinCEN director speaks at Consensus blockchain conference.** On May 13 Kenneth A. Blanco, Director of the Financial Crimes Enforcement Network (FinCEN), spoke virtually at the Consensus Blockchain Conference calling for collaboration between the government and financial institutions and virtual currency service providers to prevent and combat financial crime such as money laundering (AML) and the financing of terrorism (CFT). Director Blanco addressed FinCEN's efforts to provide guidance related to AML and CFT involving virtual currency related to the coronavirus disease 2019 (COVID-19) pandemic, the Travel Rule, and opportunities for collaboration and challenges in the fight against the illicit use of virtual currencies.
- **Congressional Research Service reports on fintech.** On April 28, the Congressional Research Service issued a report titled "Fintech: Overview of Innovative Financial Technology and Selected Policy Issues" which includes a discussion on the regulation of cryptocurrency and initial coin offerings, how cryptocurrency could affect monetary policy and fraud and consumer protection issues related to ICOs.

STATE DEVELOPMENTS

Blockchain

- **Kentucky creates blockchain working group.** On April 24, the Governor of Kentucky signed SB 55 to create a blockchain technology working group to evaluate the feasibility and efficacy of using blockchain technology to enhance the security of and increase protection for the state's critical infrastructure, including utilities. The new law takes effect July 1.

INDUSTRY DEVELOPMENTS

Bitcoin

- **Bitcoin halving event.** The anticipated bitcoin halving event occurred on May 11, 2020. Every 210,000 blocks mined, or about every four years, the reward given to bitcoin miners for processing transactions is cut in half (i.e., "halved"). Eventually the mining rewards will decrease to zero, and the maximum of 21 million bitcoin will be fully released by 2140. At that point, miners will be rewarded solely with fees for processing transactions, which bitcoin network users would pay. The May 11 halving decreased the mining reward from 12.5 bitcoin per block to 6.25 bitcoin per block. Past halving events occurred in November 2012 and July 2016.

The halving process reduces by 50 percent the rate at which new Bitcoin is released into circulation and acts to predictably control Bitcoin inflation by limiting the available Bitcoin supply in use across the blockchain network. Additionally, as the mining reward decreases by 50 percent, the mining capacity allocated to the Bitcoin network should correspondingly decrease. In practice, the difficulty of the mining process is also adjusted dynamically by the Bitcoin network, so a decrease in mining rewards and activity could be offset at least in part by a decrease in computing costs..

Virtual currency

Libra updates its white paper. In April the Libra Association Members updated its white paper to adopt four key changes in response to regulatory concerns:

1. Offering single-currency stablecoins in addition to the multi-currency coin.
2. Enhancing the safety of the Libra payment system with a robust compliance framework.
3. Forgoing the future transition to a permissionless system while maintaining its key economic properties.
4. Building strong protections into the design of the Libra Reserve.

ENFORCEMENT ACTIONS

FEDERAL

Securities

- **Telegram CEO announces an end to work on TON blockchain.** After the SEC obtained a preliminary injunction prohibiting distribution of Gram tokens (discussed here and here), on May 12, Pavel Durov, the CEO of Telegram Group, Inc., posted that Telegram's active involvement with TON is over. The announcement comes in the midst of efforts to persuade initial purchasers of Grams to loan their funds back to the project for a year with the hope of a 110 percent repayment of their purchase amounts. Alternatively, initial purchasers are being offered 72 percent of their investment back now. It is unclear whether the loan proposal will proceed in light of the announcement. In his post, Durov claimed that the injunction order impedes on the sovereignty of other nations by preventing distribution of tokens abroad. Durov also noted that networks built on TON technology may continue to appear but without Telegram's active involvement or affiliation. Meanwhile, the SEC action continues for the moment with the parties working through a potential discovery schedule.
- **SEC charges Dropil and its founders with fraudulent ICO.** The SEC on April 23 announced it had charged Dropil, Inc. and its three California-based founders with defrauding investors in a fraudulent and unregistered initial coin offering (ICO) in the form of DROP tokens that raised more than \$1.8 million from thousands of investors. The SEC seeks an injunction, disgorgement and civil monetary penalties.
- **The Blockchain Association files amicus brief in Kik litigation.** In the SEC's ongoing enforcement action against token issuer Kik Interactive, Inc. (read more here and here), on April 17 The Blockchain Association filed an amicus curiae brief in support of Kik. In its brief, the Blockchain Association seeks to focus the court and the SEC on the specific set of facts involved in the Kik case and avoid a farther-reaching ruling that could impact the blockchain and cryptocurrency ecosystem more broadly. The brief argues that the SEC's position in the Kik case differs from the limited guidance previously provided by the SEC on how to fund and introduce blockchain networks and asks the SEC and the court to "follow existing SEC rules and guidance: the sale of digital assets under a statutory exemption, or their circulation to the public once a functional network exists, does not amount to an improper distribution of unregistered securities. Rather, the fact-specific test under *Howey* continues to govern whether a particular asset amounts to a security." The brief also seeks to distance the Kik case from the *Telegram* decision: "The Court should not adopt the novel theory advanced in the recent *Telegram* decision: that complying with existing securities exemptions by contracting with sophisticated accredited investors amounts to a 'scheme' to distribute unregistered securities to the public at some point in the future. The *Telegram* decision treats cryptocurrency as somehow different from every other industry. Following that decision could undermine innovation in an important new field of technology while excluding an industry from the same securities law exemptions that are supposed to apply uniformly."

Commodities

- **CFTC charges Fingerhut and others with fraud.** On May 7, the CFTC announced the filing of a fraud complaint against Daniel Fingerhut, Tal Variola and Itay Barak, and three affiliated companies for soliciting tens of millions of customers to open and fund off-exchange binary options and digital asset trading accounts. The scheme allegedly caused more than 59,000 customers to open and fund accounts, generating more than \$20 million in commissions to the defendants. The CFTC seeks restitution, disgorgement, civil monetary penalties, registration and trading bans and injunctions.

STATE

Securities

- **New Jersey court holds that name change of Riot Blockchain did not constitute securities fraud.** On April 30, the US District Court for the District of New Jersey granted the motion to dismiss filed by Riot Blockchain Inc. in a class action lawsuit filed in February 2018. The order dismissed the complaints allegations that Riot Blockchain's decision to change its name from Bioplix in 2017 was a scheme to drive up the company's share price and enrich inside investors .
- **Overstock.com seeks dismissal of Utah class action.** On May 12, Overstock.com, Inc. filed a motion to dismiss seeking to dismiss the complaint which alleged that the company made false statements about financial projections for 2019 and that Overstock engineered a scheme to issue a digital dividend to create an artificial squeeze on short sellers.
- **Ripple again faces allegations of unregistered sale of securities.** On May 1, Bitcoin Manipulation Abatement, LLC (BMA) filed a complaint against Ripple Labs, Inc. and its founder, Brad Garlinghouse, in the US District Court for the Northern District of California. The complaint alleges violations of securities laws in the sale and marketing of Ripple's XRP token, including allegations that Ripple failed to register the \$1.1 billion sale of XRP tokens with the SEC and California regulators and that Ripple misrepresented the sale to artificially increase the price of XRP tokens. BMA seeks restitution as well as an injunction, "compensatory damages" and attorneys' fees. For information on other litigation against Ripple, see our April issue.

SPOTLIGHT ON INTERNATIONAL DEVELOPMENTS

Blockchain

- **EU Blockchain Forum reports on Blockchain, IOT, and AI.** On April 21, the EU Blockchain Observatory & Forum published a report entitled "Convergence of Blockchain, AI, and IOT" discussing how blockchain technology can be used in conjunction with the Internet of Things and artificial intelligence to complement each other and build new kinds of platforms, products and services, and the risks and challenges posed by such approaches.
- **WEF publishes toolkit for blockchain development.** On April 28, the World Economic Forum's Center for the Fourth Industrial Revolution published a blockchain deployment framework titled "Redesigning Trust: Blockchain Deployment Toolkit." This framework is intended to provide actionable principles for designing and deploying blockchain solutions in a variety of industry segments, including supply chain, finance and digital media. The framework includes 14 modular kits, and address areas such as data protection, public v. private structure, cybersecurity, digital identity, consortium formation, governance, financial reporting and controls, and legal and regulatory compliance. Additionally, the report identifies a number of key areas of legal and regulatory compliance, including the following:
 - Jurisdiction
 - Governance and legal documentation
 - Liability
 - Intellectual property rights
 - Personal data privacy
 - Decentralised autonomous organizations (DAOs)
 - Smart contracts
 - Exit from blockchain.

Digital assets

- **UK regulator announces digital sandbox pilot.** On May 5, the UK's Financial Conduct Authority (FCA) announced it will pilot a "digital sandbox" which will open during the summer. The FCA accelerated its plans due to the COVID-19 pandemic and will pilot aspects of the sandbox in a modular fashion. The sandbox is intended as a permanent testing environment, allowing firms to test and develop proofs of concept in a digital testing environment.
- **Portuguese government creates "technological free zones."** On April 21, the Portuguese Council of Ministers issued a resolution revealing the country's Action Plan for Digital Transition which included plans to create "Technological Free Zones" (Zonas Livres Tecnológicas) with eased regulations and requirements for the demonstration and testing of new technologies across various industries and sectors.

Virtual currency

- **Australian woman charged in unlawful exchange of cryptocurrency.** On May 15, the New South Wales Cybercrime Squad reportedly charged an Australian woman with breaching requirements related to digital currency exchange services, after seizing more than \$60,000 in cash and 3.8 bitcoin. The woman is allegedly part of a syndicate providing unregistered digital currency exchange services, exchanging cash for more than AU\$5 million in bitcoin..
- **Chinese appellate court finds bitcoin to be a digital asset.** On May 6, the Shanghai No. 1 Intermediate People's Court reportedly announced its findings that bitcoin is a digital asset and all bitcoin obtained through illegal means should be returned or compensated at a discount.
- **European Central Bank publishes report on global stablecoins.** On May 5, the European Central Bank (ECB) published "A Regulatory and Financial Stability Perspective on Global Stablecoins," an article that reviews the function, classification and financial stability risks of global stablecoins. The article concludes that the financial stability risks posed by global stablecoins require a robust regulatory framework.
- **European Central Bank assessing CBDC.** On April 28, Fabio Panetta, an Executive Board member of the ECB published a blog post entitled "Beyond Monetary Policy – protecting the continuity and safety of payments during the coronavirus crisis" which discusses the ECB's assessment of the case for issuing a "digital euro" – in part as in response to concerns regarding handling of paper currency during the COVID-19 pandemic – in addition to private means of electronic payments.
- **FATF publishes report on impact of COVID-19 on money laundering and terrorist financing.** On May 4, the Financial Action Task Force (FATF), and independent inter-governmental body, published "COVID-19-related Money Laundering and Terrorist Financing – risks and policy responses," a report identifying challenges, good practices and policy responses to new money laundering and terrorist financing threats and vulnerabilities arising from the COVID-19 crisis. The report focuses on:
 - New threats and vulnerabilities stemming from COVID-19-related crime and impacts on ML and TF risks
 - Current impact on AML/CFT efforts by governments and the private sector due to COVID-19 and
 - Suggested AML/CFT policy responses to support the swift and effective implementation of measures to respond to COVID-19, while managing new risks and vulnerabilities identified, including: charitable activity and economic and fiscal stimulus and financial rescue packages for firms and individuals.
- **Netherlands central bank announces registration for virtual currency service providers.** On May 4, the De Nederlandsche Bank (DNB) called for crypto service providers to apply for registration before the May 18 effective date for the Implementation Act amending the Fourth Anti-Money Laundering Directive. In addition to registration, the Act requires crypto service providers to comply with the Anti-Money Laundering and Anti-Terrorist Financing Act. Those applying before May 18 may continue operations during the period their registration application is in process.
- **Netherlands central bank publishes report on CBDCs.** On April 21, the DNB published a report entitled "Central Bank Digital Currency – objectives preconditions and design choices" and announced the DBC "wishes to play a leading role in developing CBDC" if the ECB should decide to launch an experiment involving CBDC .
- **Singapore tax authority publishes guidance on digital tokens and ICOs.** On April 17, the Inland Revenue Authority of Singapore (IRAS) published guidance entitled "IRAS e-Tax Guide – income tax treatment of digital tokens" which discusses the tax treatment of "payment tokens, utility tokens and security tokens." Payment tokens include cryptocurrencies and the guide treats them as intangible property, such that the goods and/or services purchased using the tokens are taxed. Utility tokens are deemed unlikely to be taxed but may result in a deductible expense. With respect to security tokens, the return derived from the token (interest or dividend) will determine the taxability. The guidance also reviews the tax treatment of blockchain hard forks and ICOs.
- **South African fintech working group reports on cryptoassets.** On April 16, the South African Intergovernmental IFWG Cryptoassets Regulatory Working Group published "Position Paper on Crypto Assets," a report that proposes a regulatory and policy response to crypto asset activities in South Africa to enable the development of a regulatory framework.
- **Swiss financial association issues report on custody of digital assets.** In April, the Capital Markets and Technology Association, an association of Swiss financial experts promoting the use of new technologies in capital markets, issued a report entitled "Digital Assets Custody Standard" setting forth standards, requirements and recommendations for technology solutions enabling the custody and management of digital assets.

For more information

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

Trending

Coronavirus: US federal and state governments work quickly to enable remote online notarization and SBA PPP loans to meet global crisis

OCIE announces 2020 examination priorities

More from DLA Piper

Fifth Money Laundering Directive - Summary of changes to UK AML law

In case you missed it

Legal Developments in Categorising and Tracing Cryptoassets – DLA FinBrief blog

DoD's new cybersecurity compliance program – what you need to know

Our 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 authorization under FSMA.

Read these next

The April 2020 issue of *eSignature and ePayment News and Trends*

The latest issue of our bulletin *Bank Regulatory News and Trends*

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IN THIS ISSUE

- California bill proposes limits on application of securities laws to tokens

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The proposed changes are likely to be well received by those considering issuing tokens.

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- French court clarifies the nature of bitcoins: A consumable, fungible, intangible asset

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The dispute arose in the wake of the August 2017 hard fork split.

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