Government Attitude and Definition

In the United States, cryptocurrencies have been the focus of much attention by both Federal and state governments. At the Federal level, most of the focus has been at the administrative and agency level, including the Securities and Exchange Commission (the "**SEC**"), the Commodity Futures Trading Commission (the "**CFTC**"), the Federal Trade Commission and the Department of the Treasury, through the Internal Revenue Service (the "**IRS**"), the Office of the Comptroller of the Currency (the "**OCC**") and the Financial Crimes Enforcement Network ("**FinCEN**"). While there has been significant engagement by these agencies, little formal rulemaking has occurred. Many Federal agencies and policymakers have praised the technology as being an important part of the U.S.'s future infrastructure and have acknowledged the need for the U.S. to maintain a leading role in the development of the technology.

Several state governments have proposed and/or passed laws affecting cryptocurrencies and blockchain technology, with most of the activity taking place in the legislative branch. There have generally been two approaches to regulation at the state level. Some states have tried to promote the technology by passing very favorable regulations exempting cryptocurrencies from state securities laws and/or money transmission statutes. These states hope to leverage investment in the technology to stimulate local economies and improve public services. One example, Wyoming, has been mentioned as a state seeking a broader impact on its economy. In furtherance of this objective, Wyoming passed legislation allowing for the creation of a new type of bank or special purpose depository institution. These crypto-focused banks can act in both a custodial and fiduciary capacity and are meant to allow businesses to hold digital assets safely and legally. The state has been praised for becoming the most crypto-friendly jurisdiction in the country. Another state, Colorado, passed a bipartisan bill exempting cryptocurrencies from state securities regulations. Ohio became the first U.S. state to start accepting taxes in cryptocurrency. Oklahoma introduced a bill authorizing cryptocurrency to be used, offered, sold, exchanged and accepted as an instrument of monetary value within its governmental agencies. On the other hand, Iowa introduced a bill that would prohibit the state and political subdivisions of the state from accepting payment in the form of cryptocurrencies. Authorities in at least 10 other states, like Maryland and Hawaii, have issued warnings about investing in cryptocurrencies. New York, which passed laws once considered restrictive, has eased restrictions for attaining a BitLicense in the hopes of luring back cryptocurrency companies that previously exited the New York market.

There is no uniform definition of "cryptocurrency," which is often referred to as "virtual currency," "digital assets," "digital tokens," "cryptoassets" or simply "crypto." While some jurisdictions have attempted to formulate a detailed definition for the asset class, most have wisely opted for broader, more technology-agnostic definitions. Those taking the latter approach will be better positioned to regulate as and when the technology evolves.

Sales Regulation

The sale of cryptocurrency is generally only regulated if the sale (i) constitutes the sale of a security under state or Federal law, or (ii) is considered money transmission under state law or conduct otherwise making the person a money services business ("**MSB**") under Federal law. In addition, futures, options, swaps and other derivative contracts that make reference to the price of a cryptoasset that constitutes a commodity are subject to regulation by the CFTC under the Commodity Exchange Act. In addition, the CFTC has jurisdiction over attempts to engage in market manipulation with respect to those cryptoassets that are considered commodities. The likelihood of the CFTC asserting its authority to prevent market manipulation is much higher today as a result of both the CBOE and the CME offering futures linked to the price of Bitcoin.

Securities Laws

The SEC generally has regulatory authority over the issuance or resale of any token or other digital asset that constitutes a security. Under U.S. law, a security includes "an investment contract," which has been defined by the U.S. Supreme Court as an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

In determining whether a token or other digital asset is an "investment contract," both the SEC and the courts look at the substance of the transaction, instead of its form. In 1943, the U.S. Supreme Court determined that "the reach of the [Securities] Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as 'investment contracts,' or as 'any interest or instrument commonly known as a 'security'." *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 351 (1943). It has also been said that "Congress' purpose in enacting the securities laws was to regulate investments, in whatever form they are made and by whatever name they are called." *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990).

The SEC has been clear on its position that even if a token issued in an initial coin offering ("**ICO**") has "utility," the token will still be deemed to be a security that is regulated under the Securities Act if it meets elements of the *Howey* Test. On February 6, 2018, in written testimony to the U.S. Senate Banking Committee, the Chairman of the SEC stated as follows:

> Certain market professionals have attempted to highlight the utility or voucher-like characteristics of their proposed ICOs in an effort to claim that their proposed tokens or coins are not securities. Many of these assertions that the federal securities laws do not apply to a particular ICO appear to elevate form over substance. The rise of these form-based arguments is a disturbing trend that deprives investors of mandatory protections that clearly are required as a result of the structure of the transaction. Merely calling a token a 'utility' token or structuring it to provide some utility does not prevent the token from being a security.

In a more nuanced speech delivered in June 2018, William Hinman, the SEC's Director of Corporate Finance, stated:

> Returning to the ICOs I am seeing, strictly speaking, the token – or coin or whatever the digital information packet is called – all by itself is not a security, just as the orange groves in *Howey* were not. Central to determining whether a security is being sold is how it is being sold and the reasonable expectations of purchasers. When someone buys a housing unit to live in, it is probably not a security. But under certain circumstances, the same asset can be offered and sold in a way that causes investors to have a reasonable expectation of profits based on the efforts of others. For example, if the housing unit is offered with a management contract or other services, it can be a security.

Money Transmission and Anti Money Laundering Laws

Under the Bank Secrecy Act (the "**BSA**"), FinCEN regulates MSBs. On March 18, 2013, FinCEN issued guidance that stated the following would be considered MSBs: (i) a virtual currency exchange; and (ii) an administrator of a centralized repository of virtual currency who has the authority to both issue and redeem the virtual currency. FinCEN issued guidance that stated as follows: "An administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person." See FIN-2013-G001, Application of FinCEN's Regulations to Persons Administering, Exchanging or Using Virtual Currencies (March 18, 2013).

An MSB that is money transmitter must conduct a comprehensive risk assessment of its exposure to money laundering and implement an anti-money laundering ("**AML**") program based on such risk assessment. FinCEN regulations require MSBs to develop, implement, and maintain a written program that is reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities. The AML program must: (i) incorporate written policies, procedures and internal controls reasonably designed to assure ongoing compliance; (ii) designate an individual compliance officer responsible for assuring day-to-day compliance with the program and BSA requirements; (iii) provide training for appropriate personnel, which specifically includes training in the detection of suspicious transactions; and (iv) provide for independent review to monitor and maintain an adequate program.

All U.S. persons are prohibited from doing business with foreign nationals who are on the Specially Designated Nationals and Blocked Entities List ("**SDN List**") of the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"). OFAC provides an updated and searchable version of its SDN List at: (Hyperlink) OFAC requires all U.S. citizens to "block" (i.e., freeze) the assets of individuals and companies who are engaging in transactions with (i) countries that are subject to U.S. economic sanctions, (ii) certain companies and entities that act as agents for such countries, and (iii) certain individuals that act as agents for such countries. It is important to have a compliance program in place to avoid (or mitigate) receiving civil and criminal penalties from OFAC for non-compliance. See 31 C.F.R. Part 501 (OFAC Reporting Regulations); OFAC Economic Sanctions Enforcement Guidelines (November 9, 2009).

On February 13, 2018, in response to a letter from Senator Ron Wyden, an official within the Treasury Department issued a correspondence that called into question whether ICO issuers were *de facto* an MSB that was required to register with FinCEN. While there were several flaws in the logic set forth in the letter, it remains an area of concern for anyone considering a token sale. To add more confusion, speaking at a conference on November 19, 2019, FinCEN Director Kenneth Blanco, responding to a question about Facebook's plan to issue a cryptocurrency pegged to the USD, stated that stablecoin issuers and dealers are money transmitters and must follow the BSA's AML laws.

Another tension point for AML laws is the emergence of decentralized finance ("**DeFi**"). DeFi is the permissionless decentralization version of various traditional financial instruments with a focus on exchanging assets, lending and borrowing and the creation of synthetic assets. For example, Uniswap is a decentralized exchange in the form of two smart contracts hosted on the Ethereum blockchain, as well as a public, open-source, front-end client. This ultimately allows for anyone with an internet connection to trade many Ethereum-native tokens with other users of the application. Inherent with its open-source nature, Uniswap does not have a customer identification vetting process and, in fact, circumventing AML laws is touted as one of Uniswap's foundational values amongst the cryptocurrency community. During August 2021, over $40 billion of transactions occurred using the Uniswap Protocol. In September 2021, it was reported that the SEC had begun an investigation into Uniswap Labs and its Uniswap Protocol.

Ownership and licensing Requirements

Cryptocurrency fund managers that invest in cryptocurrency futures contracts, as opposed to "spot transactions" in cryptocurrencies, are required to register as a commodity trading advisor ("**CTA**") and commodity pool operator ("**CPO**") with the CFTC and with the National Futures Association (the "**NFA**"), or satisfy an exemption. Also, because of additions to the Dodd-Frank Act, cryptocurrency hedge fund managers that use leverage or margin would also need to register with the CFTC and NFA. The Dodd-Frank Act amended the Commodities Act to add new authority over certain leveraged, margined, or financed retail commodity transactions. The CFTC exercised this jurisdiction in an action against BFXNA Inc. d/b/a Bitfinex in 2016. Fund managers should be cautious when using margin/leverage as it may require them to register as a CTA and CPO with the CFTC and register with the NFA.

The Investment Company Act of 1940 (the "**Company Act**"), the Investment Advisers Act of 1940 (the "**Advisers Act**"), as well as state investment advisor laws, impose regulations on investment funds that invest in securities. The Company Act generally requires investment companies to register with the SEC as mutual funds unless they meet an exemption. Cryptocurrency funds, and hedge funds generally, can be structured under one of two exemptions from registration under the Company Act. Section 3(c)(1) allows a fund to have up to 100 investors. Alternatively, Section 3(c)(7) allows a fund to have an unlimited number of investors (but practically it should be limited to 2,000 to avoid being deemed a publicly traded partnership under the Securities Exchange Act) but requires a significantly higher net worth suitability requirement for each investor (roughly $5 million for individuals, $25 million for entities). As a general rule, most startup funds are structured as 3(c)(1) funds because of the lower investor suitability requirements.

Until the SEC provides more guidance on classifying individual cryptocurrencies as securities or commodities, the likelihood of many cryptocurrencies being deemed securities is high. As such, we recommend that cryptocurrency funds that invest in anything other than Bitcoin, Ether, Litecoin, and the handful of other clearly commodity coins, comply with the Company Act preemptively. For most startup funds, this would mean limiting investors within a given fund to less than 100 beneficial owners.

Regardless of whether a startup cryptocurrency fund manager is required to register as a CTA/CPO with the CFTC under the Commodities Act, or register or seek exemption from the SEC as an investment advisor (under the Advisers Act), or investment company (under the Company Act), every cryptocurrency fund manager will be subject to the fraud provisions of the CFTC and/or the SEC. In September 2017, the CFTC announced its first anti-fraud enforcement action involving Bitcoin. These anti-fraud actions can be taken by the SEC and CFTC regardless of the cryptocurrency fund's exempt status.

In July of 2020, the OCC affirmed in an interpretive letter that national banks and savings associations can provide custody services for cryptocurrency. The letter noted that banks can also provide related services such as cryptocurrency-fiat exchanges, transaction settlement, trade execution, valuation, tax services and reporting. The effort supplements a patchwork of state regulation and guidance that to date has encouraged only a select few national banks and financial services companies to embrace cryptocurrency (*see above: Money transmission laws and anti-money laundering requirements*). While the OCC agreed that underlying keys to a unit of cryptocurrency are essentially irreplaceable if lost, it said that banks could be a part of the solution by offering more secure storage services compared to existing options.

Market Risk and High Volatility

Volatility is one of the factors driving the crypto market. If you don't know what volatility means, it is the sudden shifts in market sentiment that can result in significant and rapid price movements.

Volatility is not something that is only concerned with the crypto market. They are visible in other financial sectors, but the intensity and spread are higher in the crypto space. There are several reasons for the high volatility in the concerned asset class, including its nascent scheme

There are significant differences in the legal premise of digital currencies among the various regulatory agencies, which might determine the Crypto future in India . On the one hand, regulators are concerned that criminals and terrorist groups may use bitcoin and other cryptocurrencies. On the contrary, some regulators inclined towards a more accommodative regulatory standpoint, advocating growing awareness and use-cases of the underlying technologies.

Ultimately, there is no denying ..

Like other commodities, crypto assets are exposed to risks arising from market movement. There are two types of risks associated with cryptocurrency trading, i.e., systematic risks and unsystematic risks. The systematic risk is present in all cryptocurrencies because it is inherent in the crypto markets.

Why RAGS Chose Decentralised

While cryptocurrency might be the dawn of a new age, it also has a lesser-known counterpart: cybercrime. Since cryptocurrencies are fully decentralised, the crypto holders' cyber hygiene and safeguards are number #1 priority.

"Unusual disappearances" and ransomware attacks are both complicated and fast-moving threats in the crypto environment, and newbies to the crypto ecosystem often become a target. So, before entering the crypto world, it is necessary to be aware of these dangers.

Ways to manage the risks involved in cryptocurrency trading

Do Your Own Research (DYOR)
Remember the first investment rule, i.e., ‘Do your homework and only invest what you can afford to lose’. This rule is not just for cryptocurrencies but for all investments in general. Investing without research or diving into the investment pool without speaking with an investment professional is not recommended.

Understand the Reward/Risk ratio
The reward to risk ratio indicates how much money you stand to gain for each unit of currency you risk. Invest only as much as you're willing to lose. A 1:1.5 ratio is considered reasonable.

Diversify your portfolio
Investing in a variety of cryptocurrencies may help to reduce risk. With a well-diversified portfolio, the investment is spread across several coins, reducing the impact of volatility.