

DIGITAL CURRENCY

OVERVIEW

As the use of digital currency and the adoption of blockchain technology has proliferated, creating a highly efficient alternative for global commerce, it has been simultaneously complicated by a lack of regulatory certainty. The debate over the long-term potential of digital currencies and blockchain technology has been influenced in part by the regulatory scrutiny of regulators in the United States and Europe including, the Commodity Futures Trading Commission (CFTC), the Federal Bureau of Investigations (FBI), the U.S. Department of Justice, the U.S. Department of the Treasury through the Financial Crimes Enforcement Network (FinCEN), the Internal Revenue Service (IRS), the U.S. Securities and Exchange Commission (SEC), and the state of New York through the Department of Business Oversight.

BCLP has assembled a cross-functional team that counsels clients on the regulatory issues presented by the development of digital currencies and the application of blockchain technology. The Digital Currency Team includes members of the following practices:

- FinTech and Payments
- Broker-Dealer Litigation, Arbitration, and Regulatory Practice
- Fund Formation Team
- Intellectual Property
- Prepaid and Emerging Payments Team
- Public Policy and Government Affairs
- Securities Litigation and Enforcement
- White Collar Defense and Investigations

In addition, we work closely with our extensive network of international offices on cross-border matters.

This team focuses on the regulatory aspects of digital currencies and blockchain technology in light of existing regulations and in light of past prosecutions by the Department of Justice against leading digital currency platforms, FinCEN regulatory actions against money services businesses

and money transmitters, SEC enforcement actions against collective investment vehicles and mining operations that focus on digital currencies, and congressional focus on emerging digital currency businesses. The Digital Currency Team also counsels clients on the potential regulations that will be applied to digital currencies by the CFTC, FinCEN, the SEC and state regulators.

AREAS OF FOCUS

Digital currency businesses may be subject to a range of state and federal laws, including:

- CFTC Registration
- Criminal prosecution by the Department of Justice
- Federal Bank Secrecy Act (BSA) and anti-money laundering (AML) laws
- Formation and registration of digital currency funds with the SEC
- State and federal regulations governing money service businesses and money transmitters

Any client planning to develop, launch or expand a digital currency business faces significant regulatory challenges. BCLP can effectively advise digital currency businesses in the following areas:

- Federal Bank Secrecy Act and AML compliance policies, procedures, and controls
- Product launches, including design, fees, terms and conditions, and product terminations, including dispute resolution, termination and wind-down procedures
- State and federal licensing requirements and exemptions

The Digital Currency Team maintains updated 50 state surveys in all areas of state law affecting digital currency businesses. In addition to counseling on the regulatory issues, BCLP also defends clients against government investigation and complex commercial matters related to digital currencies.

CLIENT STORIES

Getting clients from A to B

Apto payments

BCLP advised [Apto Payments](#), a San Francisco based fintech company, on its launch of the UK's first cryptocurrency debit card. BCLP's solution helped Apto navigate the complex regulatory requirements challenging the launch.

MEET THE TEAM



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At long last: what crypto's first spot ETFs mean for the digital asset industry

After years of denials, the SEC has finally approved its first Bitcoin spot ETFs. Reaching this point has involved legal battles, repeated reviews of applications, and much more. That said, the SEC's approval of a Bitcoin spot ETF represents a huge leap forward for the digital asset industry: it further solidifies the primacy of Bitcoin and other cryptocurrencies as an asset class. However, these approvals were not straightforward—and at times, seemed improbable. Nevertheless, approval now deals an even greater blow to the SEC's regulation by enforcement approach. Given that Bitcoin spot ETFs have now been approved, digital assets will only be further legitimized as an asset class.

Insights

Feb 21, 2023

Catch me if you can: How the English Courts are adapting to remain an effective jurisdiction to combat crypto fraud

The English courts have sought to lead the way in adjudicating crypto-related disputes and other technological matters in an international context. Recent decisions have demonstrated the English courts' willingness to assist victims of crypto theft, and the ability of the English legal system to adapt in order to remain an effective jurisdiction for cases involving crypto fraud. In particular, recent decisions have established that: Software developers may owe a fiduciary duty to owners of crypto; New jurisdictional gateways are effective to expand the English courts' jurisdiction to allow claimants to secure information orders against non-parties based overseas; and Service out of the jurisdiction may be permitted where there is a theft of crypto assets originally located in England but subsequently transferred abroad.

Insights

19 December 2022

Web 3 - The End Of The Beginning