

BitBlog Weekly Summary: Regulatory Activity in the Digital Asset Space

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The end of July saw continued regulatory activity in the digital assets space. This entry of BitBlog will cover some of the highlights.

1) The **U.S. Securities and Exchange Commission** (“SEC”) continues to dole out bits of guidance via their rulings as to when **digital assets** can be sold and under which circumstances they can or cannot be considered securities. In this case, the SEC issued a no-action relief letter to Pocketful of Quarters, a company developing a video game currency platform that leverages blockchain technology to reduce fragmentation in the in-game currency market. This no-action relief follows on the heels of the no-action relief received by TurnKey Jet in April but goes significantly further, allowing greater flexibility in the use of the ERC-20 standard that is built on and exchanged through the public Ethereum blockchain. In both the Pocketful of Quarters and TurnKey letters the SEC identified important factors in its decision making, such as the network being fully developed and operational before the tokens are issued and that the tokens are to be immediately capable of being redeemed for their intended purpose as a currency and not as an asset to be traded. The Pocketful of Quarters no-action letter represents an important step forward for market innovators attempting to develop functional and compliant digital assets in concert with the SEC’s efforts to provide clarity regarding the regulation of digital assets. For more information on this subject please see our [blog post](#).

2) The **New York Department of Financial Services** (“DFS”) announced that it was setting up a [Research and Innovation Division](#). This new division is designed to encourage innovation in the financial services marketplace and maintain New York’s status as a competitive financial innovation hub. The DFS will be responsible for licensing and supervising virtual currencies. Given that New York is known for its beleaguered, expensive, cumbersome and generally problematic BitLicensing process, the fact that the state is working to foster innovation is good news. DFS Superintendent Linda Lacewell stated that the establishment of the Division, “positions DFS as the regulator of the future, allowing the Department to better protect consumers, develop best practices, and analyze market data to strengthen New York’s standing as the center of financial innovation.” Time will tell if this new division lives up to its promise.

3) Before going into its summer recess, the **U.S. Congress** continued its slate of hearings related to the **FinTech space**. These hearings received extensive public attention, particularly those held on July 16th and July 17th related to the announcement by Facebook of its intention to launch a digital currency called Libra. During the hearing legislators expressed a large degree of skepticism and Facebook representatives appeared surprised and somewhat unprepared for the level of opposition Libra received. These hearings continued on a somewhat more optimistic note with the Senate Banking Committee testimony on July 30 in a hearing entitled, "[Examining Regulatory Frameworks for Digital Currencies and Blockchain](#)." At the July hearing the many senators appear open to innovation in this space as long as it was regulated and they expressed particular concern about potential abuses on the part of "big tech companies." Although Congress is on break for the remainder of August, more hearings are expected in the fall, notably the House Financial Services Committee will hold hearings on securities law exemptions including regulation A+, which is a limited form of public offerings that is increasingly being eyed for use in the digital assets space, particularly by Blockstack.

4) On July 31, 2019, the **United Kingdom's Financial Conduct Authority (FCA)** published its final guidance regarding **crypto-asset activities** and the scope of its regulation. This guidance has been in progress for a long time and is the product of much consultation with regulators and market participants. Unlike in the SEC where crypto-asset regulation is divided among many regulators, both state and federal, in the UK the FCA is responsible for the implementation of the vast majority of financial regulations. A core purpose of these guidelines is to help the FCA and market participants determine whether the activities they are conducting are regulated.

The FCA divides digital tokens into three groups; 1) Exchange Tokens, 2) Utility Tokens and 3) Security Tokens. However, even after considerable feedback the distinction between these types of tokens is not altogether clear. Bitcoin and Ethereum are classified as Exchange tokens and are, at least for now, outside of FCA regulations. This is in contrast with Security Tokens which covers shares, debentures and units in a collective scheme under FCA regulation. Utility Tokens exist in the gray area between Security Tokens and Exchange Tokens. These tokens do not meet the definition of a security but may still be subject to e-money rules. With Facebook's Libra looking to be only the first of many private currencies we will see if these guidelines become the basis for some sort of global regulation.

Separate from this guidance, and somewhat more controversially, the FCA also just proposed to ban retail investors from investing in all types of crypto derivatives.

- [FCA proposes ban on sale of crypto-derivatives to retail consumers](#)
- [PS19/22: Guidance on Cryptoassets](#)
- [Guidance on Cryptoassets: Feedback and Final Guidance to CP 19/3](#)

6) Back in the United States the litigation related to Mt. Gox looks to continue for the foreseeable future. The Japanese exchange at one point handled over 70 percent of all bitcoin transactions, but collapsed in 2014 amid allegations of hacks, fraud and theft. On July 30 Philadelphia District Judge Robert Kelly ruled that a class action lawsuit against Mt. Gox CEO Mark Kapeles can proceed after denying a request to dismiss for lack of jurisdiction. Discovery might prove very interesting in this one.

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