

CRYPTOCURRENCY AND THE LAW

THE NEW FRONTIERS

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Remember when the primary principle behind cryptocurrency was decentralization? In a move that should surprise no one, global Central Banks declared in unison: ‘not so fast!’ Ever the currency regulators, the Central Banks seized upon the blockchain ledger–driven currencies’ digital traceability to track their movement more tightly than they were ever able to do with fiat currencies in circulation.

Being digital currencies, that part was a piece of cake. However, regulating cryptocurrency altogether has been more challenging. But have no fear; with the assistance of battalions of lawyers and algorithm experts, cryptocurrency will indeed be regulated, controlled, ‘stabilized’, and taxed.

If We Can’t Stop It....

Think ‘cryptocurrency’, and the name—or more accurately, pseudonym—Satoshi Nakamoto comes to mind. On January 3, 2009, the creators of Bitcoin launched a blockchain ledger for the issuance of ‘A Peer-to-Peer Electronic Cash System’, so named in the eponymous whitepaper describing the open-source software behind cryptocurrency. But although most observers, both in government and on Wall Street, dismissed the novel idea as a fad that would never take the place of government-issued currency in any real marketplace, that skepticism soon dissipated as major retailers from coffee chains to car dealers agreed to accept Bitcoin as—money.

Bitcoin, along with a host of newly-mined competing cryptocurrencies, were here to stay. The only thing the Federal Reserve—and its counterparts around the world—could do, was figure out a way to regulate it.

Defying DeFi

A guiding principle of Decentralized Finance (DeFi) was to remove Central Bank control over currency and allow the possessor of the digital currency to hold it digitally without the need for a traditional banking institution. But after a few well-publicized

crashes of ‘stablecoins’, a type of cryptocurrency tied to the U.S. Dollar, government regulators, as well as bi-partisan legislators in Congress, argued that firm regulation was needed in order to ‘protect the investor’. The debate then became one of exactly what aspect should be regulated and how far such regulation of erstwhile decentralized tokens should go.

Defining DeFi

As the Federal Reserve was busy working out how to regulate cryptocurrencies, both the IRS and the SEC were maneuvering to get their own regulatory protocols in place. According to the Treasury Department, cryptocurrency was not a ‘currency’, but rather a speculative capital asset, much like a stock or a work of art, which, as it appreciated must be subject to Capital Gains Taxes. The trading of cryptocurrency came under regulatory scrutiny as the SEC filed suit against cryptocurrency platform Coinbase. According to Paul Grewal, Chief Legal Officer for Coinbase, “The SEC has told us it wants to sue us over Lend. We don’t know why” this, after months of attempting to engage with the securities regulator.

In July 2022, The World Economic Forum came out foursquare in favor of widespread regulation of

Executive Summary

> The Issue

What far-reaching government regulation of cryptocurrency will mean for trading platforms, investors, and other parties to the presumed decentralized finance industry.

> The Gravamen

Domestically and globally, every financial regulatory agency is strategizing to get control over this unexpected competitor to their fiat currencies.

> The Path Forward

The advice of cryptocurrency lawyers will be crucial for all participants in the cryptocurrency market in order to avoid the pitfalls of looming regulation, control, and taxation.

cryptocurrency, including the release of the Markets in Crypto-Assets (MiCA) provisional agreement in the EU and the release of the Framework for International Engagement on Digital Assets in the US. Thus, the notion of cryptocurrency decentralization was short-lived indeed.

Enter The Lawyers

As one might imagine, between the cryptocurrency developers and miners themselves, the Federal Reserve, the IRS, the SEC, and every Congressional Finance Committee and watchdog organization in between, there is LOTS of work for lawyers in this emerging field. How much work? According to a recent Wall Street Journal report, crypto industry players are 'poaching lawyers' to fill the gaps that exist in the demand for cryptocurrency lawyers to counsel cryptocurrency exchanges and to navigate rapidly expanding regulatory regimes. Some law firms are losing partners to in-house positions where the pay ranges from \$100,000-\$200,000; however, remuneration for in-house cryptocurrency lawyers is often tied to equity rewards, and if a company has a successful IPO launch, the attorney's share can be anywhere from \$300,000 to \$1 million.

Two Misreads and An Opportunity

First, government regulators everywhere misread the viability of cryptocurrency, and then, the developers, miners, trading platforms, and investors themselves misread the regulatory vulnerability of what was supposed to be strictly a 'Peer-to-Peer Electronic Cash System.' Both misreads created the boom for cryptocurrency practitioners that we are witnessing today. Government regulators are scrambling to put in place lawyers who will draft and interpret World Economic Forum and IMF frameworks and prosecute thereunder, while numerous law firms are ramping up their cryptocurrency practice sectors in earnest as mainstream investors as well the now-regulated platforms require their expert representation. Whether cryptocurrencies such as Bitcoin, Dogecoin, Ethereum, XRP, and all the rest will go up in value, decline, or stabilize, is one of the great unknowns. However, what is a take-it-to-the-'bank' certainty, is that they will all be tightly controlled, tracked, regulated, and taxed all with the broad assistance of lawyers.

Action

- 1 Staying Current**

At the present time, cryptocurrency regulation is very much a moving target, with different laws applying in different countries as well as in different U.S. states. Keeping up with these changes is critical to avoiding liability for one's self or one's client.
- 2 No Privacy**

Whatever one's involvement with cryptocurrency offerings, investing, or remitting as payment, one thing to keep in mind is that cryptocurrency transactions are far more transparent and traceable than any cash currency transactions.
- 3 Reporting**

Bitcoin, Ethereum, and other cryptocurrencies are considered by the IRS to be "property" for tax purposes, which means they will be subject to taxes the same as other assets such as precious metals or stocks.
- 4 Opportunity**

For the lawyer looking to take advantage of the professional opportunities that exist as a result of cryptocurrency regulation, demand for such practitioners can be found in the government, industry, and law firm arenas.



Further Reading

1. <https://www.wsj.com/articles/crypto-industry-cant-hire-enough-lawyers-11650879002>
2. <https://complyadvantage.com/insights/cryptocurrency-regulations-around-world/>
3. <https://www.weforum.org/agenda/2022/07/cryptocurrency-regulation-global-standard/>
4. <https://time.com/nextadvisor/investing/cryptocurrency/why-crypto-regulation-is-good-for-investors/>
5. <https://www.law.com/corpocounsel/2021/06/08/pay-for-in-house-counsel-in-crypto-companies-can-yield-big-rewards-or-risk/>
6. <https://blog.coinbase.com/the-sec-has-told-us-it-wants-to-sue-us-over-lend-we-have-no-idea-why-a3a1b6507009>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years of experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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