The Dawn of Crypto Regulation

A REPORT FROM THE INSTITUTE FOR FINANCIAL MARKETS

ON APRIL 11, 2018, regulators, academics and market users gathered in Washington DC to discuss the issues, challenges and future of regulation for the digital asset space. Titled “Smart Financial Regulation Roundtable: Implications of Cryptocurrencies,” the program featured three separate sessions:

The first session: The State of Play in Cryptocurrencies – What are cryptocurrencies and how are they being used and regulated?

The second session: The Regulatory Response to Cryptocurrencies – What should regulators and policymakers do to help cryptocurrencies achieve their potential while minimizing risk?

The final session: A Fireside Chat with CFTC Commissioner Rostin Behnam and Brian Knight, Director of the Program on Financial Regulation and Senior Research Fellow at the Mercatus Center.

The event, a joint effort by The Institute for Financial Markets and Mercatus Center at George Mason University, featured 11 panelists and speakers who laid out the regulatory landscape for cryptocurrencies, initial coin offerings and blockchain.

This report was written and produced by Jim Kharouf of John Lothian Productions for the IFM.

This report was brought to you by the Institute for Financial Markets, a nonpartisan, nonprofit educational foundation. The IFM seeks to increase public awareness and understanding of the importance of financial markets and the financial service industry to the global economy and to improve the technical competence of those in the industry who deal with the public.

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Introduction

The digital asset space is undergoing rapid change, from the explosion of cryptocurrencies to blockchain to initial coin offerings (ICOs). The digital asset space's exponential growth over the last few years from individuals to a robust ecosystem of retail and large institutional participants has largely gone unregulated in the US and many other countries, and banned or curtailed in others.

Now regulators are faced with the task of figuring out if existing regulatory rules and structures are suitable for digital assets, or if the technology and potential innovations may require a new regulatory framework. This new asset class has grabbed the attention of virtually every U.S. federal and state financial regulatory agency.

The U.S. Treasury Department, Department of Justice, Securities & Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), all have a hand in monitoring various parts of these markets. The U.S. Treasury's Financial Crimes Enforcement Network (FinCen) is believed to have been the first to offer any guidance on the assets in 2013 in terms of complying with the Bank Secrecy Act, or registering with FinCen. The SEC and CFTC have drawn much attention for their moves into the space as well in the past year. SEC Chairman Jay Clayton is renowned in the digital space for saying he hasn't seen an ICO yet that was not a security, thus putting ICOs firmly under the SEC's jurisdiction. Meanwhile, the CFTC has taken a fairly light touch approach to crypto assets, but has claimed cryptocurrencies as commodities and thus they also fall under its jurisdiction. That was supported by a recent court ruling.

At the state level, digital assets have fallen into any number of categories that vary from state to state. This has led to some confusion among some crypto asset companies, but it also speaks to the nascent market and just how some states are adjusting to them. The Texas Department of Banking, for example, brought a cease and desist order against one cryptocurrency banking platform in January 2018 and another in February. But it has opened cases against more than 50 different firms over the past six months. In Wyoming, the state legislature passed a bill that would exempt certain blockchain tokens generated through an ICO from securities regulations and money transmission.

In short, the US federal and state regulatory oversight for digital assets is a fairly diverse and fragmented structure at the moment. How it is performing today and how it will evolve is the question for market participants and regulators themselves. Those questions are why the IFM and Mercatus Center decided to host the Smart Regulation Roundtable: Implications of Cryptocurrencies.

What follows is a recap of the two roundtable discussions and Fireside Chat with CFTC Commissioner Rostin Behnam. The aim is to put these discussions into a narrative that explains the issues, challenges and processes for regulating the digital asset space in the United States, and perhaps internationally as well.

PANELISTS:

- **Paul Atkins**, Chief Executive Officer, Patomak Global Partners
- **Joseph Brady**, Executive Director, North American Securities Administrators Association
- **Chris Brummer**, Professor of Law, Georgetown University Law Center
- **Sara Hanks**, Co-founder and CEO, CrowdCheck

MODERATOR:

- **J. W. Verret**, Senior Affiliated Scholar, Mercatus Center at George Mason University

Given how young the digital asset space is, it is not a surprise that regulators have varied in their response to the nascent sector. What first began as a rather simple cryptocurrency called bitcoin, has exploded into more than 1,500 crypto coins and hundreds of so-called initial coin offerings, which is a type of crowdfunding for businesses. Almost all of these cryptocurrencies and ICOs are traded on over-the-counter markets based in the US, Europe and Asia, with some in traditionally lightly regulated jurisdictions such as the Cayman Islands and Malta.

With such a new asset class, regulators are faced with a number of questions, problems and challenges. Paul Atkins, CEO of Patomak Global Partners and former SEC Commissioner from 2002 to 2008, said even though digital assets are quite new, there is generally a legal framework and precedent in place from an SEC, CFTC, Treasury and state regulatory standpoint. In his view, the three digital assets are as follows:

- **Cryptocurrencies:** such as bitcoin, ether, and hundreds of others which are not securities and fall under CFTC oversight,
- **ICOs:** which connotes an initial public offering, and fall under SEC rules,
- **Utility tokens:** which can be used for a good or service, and may or may not be considered securities.

The State of Play in Cryptocurrencies

What are cryptocurrencies and how are they being used and regulated?

The SEC issued a report in July 2017, pursuant to Section 21(a) of the Securities Exchange Act of 1934, which is commonly referred to as the DAO Report. It examined a company called Slock.it, categorized as a Decentralized Autonomous Organization, or DAO, which sold tokens to investors that were then stolen from investors and the firm. The SEC determined that such tokens offered and sold by a DAO are securities and under its jurisdiction. The SEC chose not to pursue an enforcement action against Slock.it, but used the case to warn other companies using distributed ledger or blockchain to raise capital that they must register with the SEC or qualify for exempt status.

This is where the SEC has largely remained on the issue of securities tokens, which grant investors some level of investment in the company. In the case of utility tokens, the SEC is examining those with a measure of nuance. In certain sales of utility tokens, investors are simply buying a coupon for a good or service. And while that coupon may be bought or sold by the investor, it is not considered a security.

In Atkins' view, the SEC's positioning in the market will be critical to the ICO space.

"The SEC – and I feel strongly about this – should not be a merit regulator," Atkins said. "It's basic goal should be, how should we bring order to this particular marketplace, because people will buy (tokens) here or overseas. We need a market where people can find consistency."

ICO Illusion and Confusion

One of the issues in the ICO sector is that many firms lack regulatory knowledge or full understanding of what an ICO actually is, how it works and why an entity would want to launch one. Sara Hanks, CEO of CrowdCheck, said there are SEC laws, corporate laws, tax laws and other considerations for firms looking to launch an ICO.

In her view there are three challenges for law firms and consultants that work with firms on ICOs and blockchain services: 1) the entrepreneurs themselves, 2) corporate law issues and 3) fragmented or outdated securities laws.

The main question she asks potential clients is, "What are you doing and why do you need distributed ledger technology to do that thing?" Some companies are in very traditional businesses but don't know how they are going to integrate blockchain technology into say, a trucking operation.

The next question is, "What is your coin going to do?" Identifying the function of the token's use is one part. Bundling the rights of investors into corporate law and securities law is another. She gave the example of a firm that is currently trying to use blockchain technology for skin care, a baffling instance of just how it will use the technology for a real-world product.

"There is this challenge – from the genuine desire that entrepreneurs have to use something new, to creating something valuable – to making it fit in corporate bond and securities law," Hanks said.

Hanks said some potential clients are trying to use ICOs to avoid or circumvent US securities laws.

The second issue is complying with U.S. corporate law. Hanks said it is much easier to take an undefined group wanting to do an ICO and create a legal corporate entity for it such as a limited liability company, or LLC. Fitting it into an existing corporate structure is more difficult because an ICO may create some elements of equity in the company, or the investment could be put into a utility token later - more like a coupon or voucher. In other words, what may start out as a security token can conceivably turn into a utility token later.

An ICO may also conflict with laws in Delaware, where many companies establish their business domain. Delaware law has been amended to allow blockchain technology to record monetary transfers, but it also requires a registry for the names and addresses of shareholders. This could be a problem for an ICO, which may not require the names and addresses of investors, or if the firm doesn't know if they have an investor's real physical address or a digital wallet on a blockchain with an address. Hanks said these are subtle but serious legal risk factors for companies.

The third issue is securities law. Once a firm has decided that the tokens issued are securities, they must meet the available registration exemption required by the SEC. She added that none of the current ICOs are ready for things like proxy filings, quarterly reports and so on. Another problem with SEC rules is the issue of secondary trading. The SEC's Section 12G says when you have a set number of shareholders of record, you must file with the SEC. The question is, in the context of an ICO, is one shareholder equal to one digital wallet? For now, that is how Hanks is counting it.

"We think we are doing the best we can, but we do not know if we are compliant," she said.

Hanks added there are questions surrounding secondary trading of tokens at the federal and state levels. Secondary trading may comply with SEC regulations but conflict with state securities laws, Hanks said. If there is trading on a blockchain between individuals in Texas and Florida, the question is whether there is an exemption for such a transaction between the two states.

> “When entrepreneurs are asked what this technology is and what the value proposition of that technology is, that is a business question,” Brummer said. “If you are trying to figure out why you want to apply blockchain technology to what an entrepreneur wants to do, that’s not just a question as to whether you have a tokenized security, a native coin or a currency. It’s, do you know what you are doing as a business person?”
>
> Chris Brummer, professor at Georgetown University Law Center, on ICOs

The Howey Test and What’s Next?

One of the main legal instruments used to determine whether an ICO falls under SEC oversight is the so-called Howey test, a 1940s guideline that uses three factors to determine whether or not something is subject to securities regulation. Generally speaking, the Howey test helps distinguish an item as a security if:

- It involves an investment of money
- It is an enterprise
- And has an expectation of profit

This is where the SEC’s Clayton may derive his assertion that all ICO tokens are indeed securities. But Atkins said it may be time to revisit the Howey test.

Chris Brummer, a professor at Georgetown University Law Center, said it would be helpful to have a valid list of principals for ICOs, which address the value proposition. That could help regulators determine whether something falls under a traditional public offering, a crowdfunded venture, or something else.

“What are the tools that are available and are they sufficiently robust enough to allow an investor to make an informed decision?” Brummer said, adding that it may include key information such as where the issuer is located, a plain language disclosure statement and a description of what the value proposition is.

In some cases, its possible the value proposition may not fall into traditional corporate outlines of profit and loss set in SEC rules. Perhaps new guidelines for new technologies will require different descriptions of a business model.

“Those are the kinds of questions that securities regulators are going to think seriously about,” Brummer said.

Brummer outlined his paper called Finech and the Innovation Trilemma which addressed guidelines for fintech companies. In it, he advocates for details that: create clear rules, achieve market integrity and foster financial innovation. In his view, regulators would likely settle on two of the three. And regarding the idea of reworking the Howey test, he warned the new rules could be more restrictive than existing ones.

These questions are often perplexing for regulators and lawyers, but Brummer said this is the situation everywhere.

“There is an interest and need to deal with financial innovation,” Brummer said. “Our friends on the other side of the pond are not necessarily better equipped to deal with them.”

State Regulators

At the state level, the current focus is largely on cases of fake and fraudulent cryptocurrencies and ICOs. Joseph Brady, executive director of the North American Securities Administrators Association, which represents 53 U.S. jurisdictions and Canada’s provinces as well as Mexico, said states are taking a dual approach, providing education and cracking down on fraudulent activities.

“There is significant fraud going on in the cryptocurrency and ICO space,” Brady said. “That should not come as a shock to you.”

U.S. states and Canadian provincial regulators have been active using cease-and-desist orders against bad actors. He highlighted Texas, which issued a report in April 2018, called Enforcement Report: Widespread Fraud Found in Cryptocurrency Offerings. The report noted that in a four-week period through mid-December 2017, it conducted 32 investigations into fraud in the space. And from September to April, it opened 50 investigations, most of which were tied to bitcoin.

One of the findings regarding ICOs was that in more than 50 percent of the cases, there was no reference to any physical address in the ICOs, a problem Hanks mentioned as well. While cease and desist orders are prevalent, Brady said criminal prosecutions are likely in the future.

In many cases, individuals or firms getting into the ICO space have little understanding of the legalities at the state or federal level. Hanks brought up the case of Caviar, a company that launched a dual purpose token for real estate investments. Caviar’s founder and Massachusetts resident Kirill Bensonoff set up the company in the Cayman Islands, and did not think there were any issues with state regulators. That was until the Massachusetts Securities Division charged him with violating state securities and business laws.

“He probably didn’t really intend anything bad but there is so much myth out there in setting up a Cayman-based company, or a Belize bank account or something in Singapore,” Hanks said. “Having regulators say, come talk to us and talk about how these things should be properly done would be worthwhile.”

Brady said state regulators are offering guidance but more could be done in terms of a more cohesive education or legal approach.

The Regulatory Response to Cryptocurrencies

What should regulators and policymakers do to help cryptocurrencies achieve their potential while minimizing risk?

PANELISTS:

- **Ryne Miller**, Associate, Sullivan & Cromwell, LLP
- **Brian Trackman**, Counsel on FinTech and Innovation, Commodity Futures Trading Commission
- **Angela Walch**, Associate Professor, St. Mary's University School of Law
- **Jerry Brito**, Executive Director, Coin Center

MODERATOR:

- **Gary DeWaal**, Special Counsel, Katten Muchin Rosenman LLP

The regulatory response to digital assets has been challenging for participants, legal experts and consultants. The pace of change and advances in the technology itself has made it difficult for regulators to create solid guidance on all of the potential uses and issues that may pop up with cryptocurrencies, ICOs and blockchain users. As a base, regulators like the SEC have reached into existing securities law to determine whether they have coverage of a specific issue or problem. The question now is, what is needed from regulators in the coming months and years?

Given the emphasis the SEC has placed on the Howey test and the so-called DAO report, in July 2017, it is apparent regulators may need new tools to deal with the evolving digital asset space.

Ryne Miller, an associate at Sullivan & Cromwell, said the SEC may have done just that when the regulator effectively forced the California-based Munchee Inc. to halt its ICO in December 2017. The SEC found that Munchee's ICO "constituted unregistered securities offers and sales." In the case, Munchee, an online food reviewer platform, sought to grow its network and eventually pay users for reviews with tokens. The SEC said Munchee emphasized that investors could expect the value of the tokens to increase, and it would support a secondary market for them, leading investors to believe that they could generate a return on their investments.

"To the SEC that is important," Miller said. "That is a factor that is not in the Howey test but it is identified in the Munchee order as something relevant to securities law analysis. The SEC did not feel clearly confined by Howey and they are looking at a broader sense of what might be a security."

The SEC's new Cyber Unit, launched in September 2017, has been focused on such cases involving misconduct using distributed ledger technology and ICOs as well as uses in social media, hacking and threats to trading platforms. In the Munchee case, the SEC did not impose a penalty, as the company stopped its ICO quickly and returned any proceeds to investors before issuing tokens. The Cyber Unit's first case in December 2017, alleged fraud against a firm called PlexCorps, which raised $15 million on an ICO with promises of a 13-fold return in less than a month.

But there are other issues the SEC is considering regarding tokens. As Hanks pointed out, some ICOs feature tokens that may be securities at the start, but then transform into a utility token. SEC Chairman Jay Clayton has said that the SEC is still looking at such scenarios but it is clear it extends beyond the Howey test guidelines.

A comparable legal argument may come from another industry altogether — sports. So-called "personal seat licenses" (PSLs), sold at various U.S. sports venues, allow PSL owners the right to buy season tickets for a certain seat, and thus share some common traits with tokens. PSL holders can sell that license to someone else, essentially creating a secondary market. In 2006, the SEC issued no-action letter to the San Francisco Giants baseball team.

For Miller, it is a helpful precedent and not mentioned in the SEC's Munchee case or the DAO report. And it is possible that tokens are categorized like PSLs that can be sold on secondary markets.

Finding a strong regulatory path on new products is sometimes difficult. Gary DeWaal, Special Counsel at Katten Muchin Rosenman, hearkened back to the 1970s when a new instrument called commodity options was sold. Confusion over regulation and categorization of the instrument was part of the reason for the creation of the Commodity Futures Trading Commission in 1974. This led to the CFTC being granted jurisdiction over derivatives that are based on commodities. By 1975, bad actors selling commodity options forced Congress to ban them, except for three grandfathered-in entities, until the CFTC could get its hands around regulating them. It wasn't until 1981, when the CFTC allowed a pilot program for commodity options and they were eventually listed on exchanges shortly afterward, that the products were open to investors.

"Today, people are probably scratching their heads asking, "Why are you talking about commodity options?" DeWaal said. "There's no problem with commodity options. That's right, but there were problems. There was regulatory confusion and no one knew what box to fill in."

DeWaal said digital assets may be facing a similar scenario and trajectory. There is not a lot of case law around crypto assets yet, but that is beginning to change. He cited a CFTC case in New York in January 2018, which involved a firm called Cabbage Tech. The CFTC charged its principals with fraud and misappropriation in connection of purchases and trading of bitcoin and litecoin. In the case, the courts upheld CFTC jurisdiction.

He noted another case, now being pursued by the U.S. Department of Justice against a digital coin firm called RE-coin and DRC World, which is challenging the charge that their crypto currency constitutes a security. The Securities Act specifically exempts currencies from the definition of securities.

"It's crypto currencies," DeWaal points out in the Securities Act. "It doesn't say fiat currencies are exempted. It says currencies."

Next Regs and No Regs

Given the short supply of cases that help shape the legal definition around the digital asset space, legal experts are now looking more closely at what is and isn't needed. Some issues involve antiquated state cash transfer rules, fiduciary rules for blockchain networks or creating exemptive powers for the SEC and CFTC. Each of these could help pave the way for new regulations for the digital asset space.

One issue for cryptocurrencies is state money transmission licenses, originally designed for money wire transfers through Western Union and others. Some of the key factors involved are similar to how cryptocurrencies are used today. The transfer agents in cryptocurrencies are not banks - much like Western Union. But like Western Union, they still pose a risk to consumers since it is possible that someone could hack into that transfer, or perhaps cancel the transfer before it arrives on the other side, thus committing a fraud or theft.

With the flow of money from one person to another today, domestically or even internationally, state-by-state money transmission licenses seem antiquated, said Jerry Brito, executive director of Coin Center. And with bitcoin or other cryptocurrencies, you can transmit funds without anyone else taking custody, essentially bypassing the Western Union model. So requiring a license makes little sense, although that is the law at the moment.

"Today, transfers are not national but are global," Brito said. "And in these, the (crypto) companies represent the risk. Addressing that is one of the most important things we can do."

One solution is to create essentially a passport system, where one state license would automatically work in other states, or perhaps even other countries. States are starting to standardize their applications and there has been some regional acceptance.

Angela Walch, Associate Professor at St. Mary's University School of Law, said U.S. regulators have stepped somewhat lightly in the digital ledger technology space to allow for innovation but prevent fraud. But that has led to much confusion about what can and cannot be done. Without more decisive moves by federal regulators, she said more states are starting to take action, which leads to a more fragmented regulatory framework.

Debunking Myths

Walch said there are some blockchain myths that should be considered when creating regulatory clarity. For one, distributed ledger technology such as a blockchain is often touted as unhackable and immutable. But the hack of a DAO and reversal of funds on ethereum's blockchain in 2016 debunked the claim that decentralized systems like these can not be compromised. Moreover, there are groups of people who are governing these blockchains and hold a tremendous amount of theoretical processing power. Walch has written extensively on the topic, and has pushed for treating core developers and large miners of blockchains as fiduciaries, which comes with its own set of responsibilities.

In addition, regulators may have to monitor these blockchain administrators for possible collusion.

"Antitrust laws deal with questions of power and there are questions of power that will grow," Walch said.

She added that one often overlooked aspect of the digital asset space is that it may stretch into other regulatory agency jurisdictions. For example, are miners going to towns with low costs for electricity and putting a massive strain on the electrical grid in that location. The problem has become so large in certain cases, that city councils have made it illegal to tap into the city's electrical grid. In response, Arizona's state legislature passed legislation that prevents such limitations by cities.

"How are the systems going to tap into real world infrastructure and we're going to have a fight about those resources." Walch said.

Finding Harmony

Ryne Miller said regulators could take the approach used in the exchange traded funds (ETF) space whereby the CFTC and SEC created general exemptive authority under the Commodities Exchange Act and the Securities Act, to harmonize exemptive orders.

"It's not an exact fit for what we see in the digital currencies space, but the concept that the CFTC and SEC can do harmonized exemptive orders exists and has been used before," Miller said.

Brian Trackman, Counsel on FinTech and Innovation at the CFTC, said we are very early stage in a long-term evolution in this space. As that develops, there will be more clarity. The CFTC launched LabCFTC in May 2017 to help the regulator figure out where things are in terms of their development, meeting with innovators, industry and others. LabCFTC looking at a number of different aspects, from supply chain benefits, to accessibility to cryptocurrencies, to optimizing markets such as energy.

"People are seeing possibilities that they didn't see before," Trackman said.

Outside the U.S., there have been some regulators who have used a regulatory sandbox approach, which allows firms to bring their ideas and business structures to regulators before going to market. The aim is to help firms with compliance, and also help regulators in terms of seeing what technologies and uses are coming.

Trackman said one of the issues for US regulators is that they are not allowed to create similar sandboxes. The Lab CFTC is trying to find a middle ground by working and listening to ideas but does not work in the same manner as sandboxes elsewhere. One problem that emerged from regulatory sandboxes is that start-up firms that do not receive approval by regulators often find it difficult to attract funding by investors. While that may seem reasonable on its face, it may prevent a firm from finding the resources

that would allow it to continue developing its product and bring it back to regulators for approval.

Meanwhile, certain jurisdictions, such as Gibraltar, had almost no regulatory restrictions on digital assets because they were not considered securities. That led the regulatory agency there to develop an entirely new regulatory regime for ICO and token markets.

Where the regulatory structure goes in the coming months and years is still being defined. Legal experts are looking for precedence which may help guide firms and regulators. And regulators are urging patience as they grapple with this dynamic and evolving asset class.

"I work at a law firm and we bill by the hour. So we go as far back in time as we can and start reading everything. Here, you go very far back. You start with the Old Testament."

Ryne Miller, associate, Sullivan & Cromwell, LLP, on looking for legal precedent for digital currency cases

Commissioner Rostin Behnam Fireside Chat

With Brian Knight, Director of the Program on Financial Regulation and Senior Research Fellow, Mercatus Center at George Mason University

The CFTC has jurisdiction over derivatives in the cryptocoin space as well as fraud and manipulation cases. But it is just one of the US regulatory agencies with oversight over the digital asset market. Rostin Behnam, Commissioner of the CFTC, said the digital asset space is so new and diverse that federal agencies should take a "holistic approach" to oversee this emerging asset class.

"There needs to be broader conversation about what the policy direction is going to be and who is going to have jurisdiction over what element of it," Behnam said. "Whether it is ICOs, derivatives contracts, payment systems, ledgers, there are so many elements of fintech, coins and whatnot. We have to wrap our heads around what is the policy direction. And if there are any vacuums or shortcomings, then we need to create statutory language for those."

Behnam said his biggest concern is the broad swath of cash markets that are largely unregulated. The retail euphoria over cryptocurrencies and ICOs is also worrisome.

"It is transformational in the sense that everyone is engaged," he said. "It's fast money and returns can be quick. But I think we need to lower the temperature a little bit and be thoughtful about what we are engaging in and recognizing this is potentially transformational technology across many spectrums of commerce. If we take it slow and steady and move thoughtfully, we could really set up an amazing infrastructure."

Given the pace in which things are moving, Behnam said there needs to be a more proactive approach. He suggested a U.S. Financial Stability Oversight Council (FSOC) type model, so agencies could address cryptocurrencies, payment systems and other issues to help determine if any legislation is required.

Meanwhile, Behnam is intrigued by the potential benefits of a decentralized blockchain system for markets. Theoretically, all the relevant information of a transaction from identification to terms of a contract to price can all be rolled into a single transaction chain. And while some of that technology is already being used in private ledger systems, Behnam is cautious about public blockchain systems.

"If you think about it from a tracking standpoint, a line-of-credit, payments and processing, there are so many benefits to private ledger technology to create efficiencies across the spectrum," he said. "To transfer that to a public ledger, I think we're all very confident and optimistic about the potential. But there are certainly a lot of risks and the systems are not quite clear enough to incent business to go into it."

The main risks that CFTC is looking at in the sector include: fraud and manipulation, operational risk and cybersecurity risk.

"I don't think we are quite there in terms of understanding the infrastructure and the piping to truly appreciate what could happen," he said. "I do think we need to be a little bit more cautious and reserved in the movement toward public ledgers."

CONCLUSION

The marketplace for digital assets is quickly emerging, changing and posing challenges not only for regulators, but also for participants jumping into the space. Regulators have taken a measured approach on initiating actions and rules which has allowed innovation to continue in the space. But it also has left firms and legal experts searching and sometimes guessing about how best to comply with rules set by federal and state regulators. It also exposed gaps in existing rules that will need to be addressed by any number of federal agencies. Ultimately, the regulations in this space will continue to evolve with the technologies. Current issues facing ICOs will likely be clarified either by regulators or the courts. This is an exciting period in the development of a new asset class and it will take everyone, from entrepreneurs to regulators, to define and shape it. In many ways, this is the dawn of crypto regulation.

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