

New York State Bar Association: International Section
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Panel 10: Cryptocurrencies – A virtual reality?

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DESCRIPTION

This panel will discuss trends in structuring and regulation of cryptocurrency presales and ICOs in international markets, including multi-jurisdictional offerings and placements, against the backdrop of recent regulatory pronouncements and actions in various countries. The panel will examine a range of issues including the applicability of securities regulations to the offering and trading of cryptocurrencies, the operation of cryptocurrency exchanges and criminal and tax aspects of trading and storing cryptocurrencies.

SUMMARY

The technology of decentralized ledgers and the growing use of multilateral marketplaces are transforming the way financial assets are issued and traded. Moreover, how such transactions are settled and the property of the assets thereto is recorded has also been subject of experimentation. Trading and post trading services are under intense pressure to change, and the very notion of exchanges as the central places to trade in securities is being questioned. In this context, the issue and offering of electronic securities intended to assume the role of reserve of value - virtual “coins” - have generated controversy. Much as other tangible financial assets, virtual “coins” can be registered, traded and stored. Likewise, some companies have been accepting them to settle transactions. Hopeful users of virtual “coins” would even claim that they are progressively becoming new money issued by no central government authority.

Such state of affairs has been attracting the attention of various regulators in different parts of the world. National securities regulators have already issued statements pointing out dangers to the investor public in unregulated “initial coin offerings” (“ICO”), and have advocated the need to bring virtual “coins” under the umbrella of public offering regulations. Consumer protection agencies and prosecutors have threatened to use anti-fraud legislation to prevent

schemes that may harm investors. Tax agencies are concerned with the potential for tax evasion that multilateral trading and settlement platforms may present in view of the opaque, unregulated and anonymous environment they operate. Crime investigators fear anonymity may allow terrorists, money launderers and organized crime to flourish in dark web exchanges. More blatantly radical, though, is the objection presented by central banks to the very idea that the control of money may slip away from their hands. Money is also a means to macroeconomic policy, and there could be the theoretical danger that a competing virtual “coin” may weaken the efficacy of traditional tools of monetary policy based on centrally issued money.

In order to understand the legal impacts of this brave new world of technology and monetary affairs, this panel has elected to discuss themes including:

- trends in structuring and regulation of the issuance and distribution of ICO in international markets;
- concerns in multi-jurisdictional or “seamless” offering and placement of virtual “coins”;
- crime and tax aspects of trading and storing virtual “coins”;
- applicability of securities regulation worldwide to the offering and trading virtual “coins”, as well to exchanges and offshore market places;
- protection of investors, vulnerabilities of the technology and minimum anti-fraud standards; and
- addressing the concerns of national governments in an age of diminishing efficacy of monetary policies.

PROGRAM OUTLINE

I. TRENDS IN STRUCTURING AND REGULATION OF THE ISSUANCE AND DISTRIBUTION OF CRYPTOCURRENCIES IN ICOs IN SELECT INTERNATIONAL MARKETS: BRAZIL, CANADA, SWITZERLAND AND UNITED STATES

1. *Controversies about the nature of cryptocurrencies in the select jurisdictions: Security, investment contract, derivative contract, money or other?*
2. *Discussions about the legality of cryptocurrency acquisition and holding by parties within the jurisdiction: Onshore and offshore transactions and holdings*

II. APPLICABILITY OF SECURITIES REGULATIONS WORLDWIDE TO THE OFFERING AND TRADING VIRTUAL “COINS”, AS WELL TO EXCHANGES AND OFFSHORE MARKET PLACES

1. *Regulatory aspects of trading in cryptocurrencies*
2. *Regulation and organization of markets for cryptocurrencies*

3. *Investment funds and cryptocurrency investments: investment structures, portfolio and investment limits*
4. *Intermediaries and the marketing of cryptocurrencies: Making markets, trading and the regulation of cryptocurrency intermediaries*

III. CONCERNS IN MULTI-JURISDICTIONAL OR “SEAMLESS” OFFERING AND PLACEMENT OF VIRTUAL “COINS”

1. *Regulation of cryptocurrency issues: Authorization, offer, placement and registration*
2. *Main rules and regimes for the regulation of intermediaries participating in cryptocurrency issues*

IV. PROTECTION OF INVESTORS, VULNERABILITIES OF THE TECHNOLOGY AND MINIMUM ANTI-FRAUD STANDARDS

1. *Cryptocurrencies and AML: Guidance regulations and interpretations*
2. *Applicability of investor protection provisions contained in securities regulations*
3. *Remedies against losses incurred by investors in cryptocurrencies and other than anti-fraud provisions*
4. *Court adjudication of investor rights in cryptocurrencies: Liability against issuers, offerors and sellers*

V. MONETARY POLICIES: ADDRESSING THE CONCERNS OF NATIONAL GOVERNMENTS IN AN AGE OF DIMINISHING EFFICACY OF MONETARY POLICIES

1. *Jurisdiction of monetary authorities in cryptocurrency affairs*
2. *Prudential regulation and cryptocurrency holdings*

VII. CRIME AND TAX ASPECTS OF TRADING AND STORING VIRTUAL “COINS”

1. *Taxation regime and tax policy for cryptocurrencies: Capital gains, income and withholding regimes*

2. *Disclosure regimes: mandatory disclosure of trades and holdings for administrative, crime and tax law*