



## ATTORNEY GENERAL ALLIANCE

### ATTORNEY GENERAL ALLIANCE - DIGITAL ASSETS WHITE PAPER

#### **I. INTRODUCTION**

Cryptocurrencies may come or go and the value of an NFT may always be in the eye of the beholder, but blockchain technology and virtual assets are here to stay. As state Attorneys General, we must engage with this new – and ever growing – industry, we must understand the technology and most important, appreciate how this new area of commerce impacts our constituents. It is no longer acceptable to be on the sidelines. It is time to engage with industry to build trust, develop best practices, and to balance innovation with consumer protection by developing the appropriate regulatory framework.

In November 2021, Vermont was honored to host a meeting of experts on cryptocurrency. Following numerous presentations Vermont AG Donovan moderated a discussion between the private sector and more than 20 representatives from states across the country. While the discussion points varied, one thing became obvious: we needed to learn more about each other. The private sector was creative and bullish about the technology and doing laudable things. For example, we heard from Amit Sharma, the CEO of [Finclusive Capital](#) which is a fin-tech company using blockchain technology to bring banking services to the underbanked across the globe. Fascinating and important work. But we also heard from the state AGs about scams, abuses and a lack of transparency that was disturbing.

Having seen and heard enough to know we needed to see and hear more, we asked the AGA to do three things: 1) help problem solve how to investigate complaints; 2) get information into the hands of state AGs across the country that will help break down barriers to entry when encountering blockchain or cryptocurrency; and 3) reconvene. This white paper delivers, in part, on the first two directives and I look forward to reconvening the Cyber Working Group with a focus on blockchain and cryptocurrency this March in California.

This white paper does not represent the views of any individual but instead is a product of a cooperative effort by staff of several Attorney General offices and the private sector. It is a product of cooperation and partnership. Special thanks for our friends at Jones Day who enabled a Spanish version of this document so it can be shared more widely and through AGA's Alliance Partnership with Mexico. For any questions regarding this publication please contact David Blake, General Counsel for the Attorney General Alliance at [David.Blake@agalliance.org](mailto:David.Blake@agalliance.org).

We believe this document will help inform state Attorneys General and their staff about cryptocurrency and blockchain issues and better empower us all to do the right thing. We appreciate all our partners on this project and also the AGA for continuing to bring us together to have substantive dialogue about issues that matter.

Jason R. Ravensborg  
South Dakota Attorney General

T.J. Donovan  
Vermont Attorney General



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## II. THE DIGITAL ASSETS MARKETPLACE

The ecosystem of digital assets is complex and developing and the terminology used to describe it is accordingly in flux. This White Paper adopts the following broad definition of “Digital Assets”:

*any digital representation of value or utility in some environment or situation, which is generally transferrable and viewed as a store of value.*

While many digital assets are created and controlled using blockchain technologies, some are not, and this definition aims to include them all. That said, it is often easiest to think about digital assets in the context of their most common forms— “coins,” “tokens,” and “non-fungible tokens.”

### A. Major Types of Digital Assets

#### I. Coins

The term “coin” generally refers to cryptocurrencies—such as Bitcoin—which have the primary function of serving as a transferable store of value. Initial Coin Offerings (“ICOs,” discussed below) proliferated in 2017-2018, and became a mechanism for raising capital more so than merely launching a new type of coin.

There are also different types of coins. Bitcoin (BTC) and Litecoin (LTC) are types of coins whose intended function is most akin to currency—a store of value that can be exchanged for other valuable things or services. Like most currencies, these types of cryptocurrency fluctuate in terms of relative value based on a set of factors, like demands, perceived stability, etc. In contrast, “Stablecoins” are a type of digital currency that attempts to avoid the volatility of typical of cryptocurrencies by fixing (or “pegging”) their value in relation to specific fiat currency, such as the U.S. Dollar. Stablecoins typically are backed by U.S. dollar-based assets, which can include commercial paper, bonds or other financial instruments. Other coins are more farcical (such as memecoins) – at least at their creation – and unhelpfully confuse the landscape. Examples of such coins include Dogecoin, Shiba Inu, or ELON.

Another unique type coin is the central bank digital currency or CBDC. CBDCs are pegged to the value of the issuing country’s fiat currency and are issued and regulated by the national monetary authority or central bank. CBDCs are different from other digital currencies because they are not decentralized and may not require blockchain technology or consensus mechanisms, which is why they are not generally considered cryptocurrencies. As of March 2022, nine CBDCs

have been successfully launched, mostly in Caribbean countries, and Nigeria.<sup>1</sup> In addition, several countries have launched pilot CBDCs (like China) and still more countries are developing or researching CBDCs. In the United States, President Biden's recent Executive Order mandates a study of the feasibility of a U.S. CBDC. Creation of a CBDC is one way to combat the theory that decentralized finance will eventually overtake more traditional currency – like Bitcoin becoming the new dollar.

## 2. *Tokens*

Tokens are most easily understood in distinction to coins, and there are two common types: utility tokens and security tokens.

As their name suggests, **utility tokens**: (i) are frequently specific to a certain program or platform; (ii) can act like 'currency' but only for specific services or products; and (iii) generally do not have the primary purpose of transferring value between individuals. These are not hard-and-fast rules, but general principles. For example, Brave's Basic Attention Token (BAT) is a utility token awarded to users of the Brave browser who elect to view advertisements, and can be used to 'tip' content creators.<sup>2</sup> In addition, Filecoin (FIL) is a utility token that provides users access to a decentralized cloud storage program.<sup>3</sup> Utility tokens are sometimes called "user tokens" or "app coins" and many of them are built on the Ethereum blockchain.

**Security tokens** are less common and represent ownership of some underlying thing, often a digitally-native asset. Security tokens could also represent traditional securities (such as stocks, bonds, ETFs,<sup>4</sup> options, futures, etc.) or real-world assets (e.g., real estate). For example, AlphaLedger offers a blockchain-based asset and securities management platform where users can register municipal bonds, receiving a token associated with that commodity that includes the ability to execute smart contracts and have all transactions stored on a blockchain.<sup>5</sup> Or, to take another example, EXIT tokens represent a share of Exodus, which provides cryptocurrency wallets.<sup>6</sup> Ethereum is the most commonly used blockchain for security tokens as well.

## 3. *Non-Fungible Tokens (NFTs)*

NFTs are essentially unique creations that use cryptography and uniquely identifiable metadata to verify their authenticity. The data of an NFT is commonly stored on a blockchain (such as Ethereum or Solana), and the token can act as a representation for both virtual items (e.g.,

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<sup>1</sup> The nine countries include: the Bahamas, Antigua and Barbuda, St. Kitts and Nevis, Monserrat, Dominica, Saint Lucia, St. Vincent and the Grenadines, Grenada, and Nigeria. See <https://www.atlanticcouncil.org/cbdctracker/>

<sup>2</sup> See "BAT Ad Ecosystem," <https://basicattentiontoken.org/> (accessed Mar. 14, 2022).

<sup>3</sup> See "Store," <https://filecoin.io/store/#storage> (accessed Mar. 14, 2022)

<sup>4</sup> An exchange-traded fund (ETF) is a type of pooled investment security that operates much like a mutual fund.

<sup>5</sup> See "The Alpha Model," <https://www.alphaledger.com/> (accessed Mar. 14, 2022).

<sup>6</sup> See "EXIT tokens," <https://support.exodus.com/article/1564-introducing-exit-tokens> (accessed Mar. 14, 2022).

one-of-a-kind digital artwork, unique in-game items) and tangible items (e.g., collectibles such as physical works of art and sports memorabilia). There are digital marketplaces dedicated to NFTs, such as Dapper Labs, OpenSea and Rarible, but NFT trading is becoming available outside of these specialized platforms.

## **B. Important Aspects of Digital Assets<sup>7</sup>**

### *1. Blockchain*

A blockchain is a digital public ledger of transactions organized into blocks that are linked together using cryptography. The ledger is maintained simultaneously on numerous computers that are linked together in a peer-to-peer network making the ledger difficult (some would argue impossible) to change, hack or cheat exactly because the ledger is maintained by many. A modification of any individual ledger would be shown to be false by comparison to all the copies. Bitcoin was the first digital currency that used blockchain technology to solve the problem of preventing double-spending without the need of a central trusted authority. Blockchain is the technology that enables decentralized financial networks and is being adapted to support smart contracts, NFTs, and an unlimited number of entrepreneurial concepts. While most cryptocurrencies have public blockchains, private blockchains also exist where access is strictly controlled or highly limited.

### *2. Wallets*

Wallets store an individual's "private keys", which are the way a cryptocurrency is possessed or controlled. Crypto wallets are software that utilize a private key that is unique to the owner to execute or verify cryptocurrency transactions based on a corresponding "public key" that is available on a blockchain. Wallets can be a physical device (like a thumb drive) or part of another piece of software (like a browser extension). Many exchanges (such as Coinbase or Blockchain.com) also provide custodial wallets to their customers, through which users can send, receive, and spend cryptocurrencies. As part of the exchanges, the custodial wallets are also subject to Know Your Customer (KYC) obligations and Anti-Money Laundering and Countering Terrorist Financing (AML/CFT) regulations. Connecting a human being to a wallet is one source of frustration to law enforcement and a key reason custodial wallets present less investigatory challenges than non-custodial wallets.

## **C. Similarities and Differences among Digital Assets**

Digital assets tend to share common characteristics that distinguish them from other electronic media: (i) integral use of cryptography;<sup>8</sup> (ii) blockchain technology; and (iii) a

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<sup>7</sup> The Cascadia Blockchain Council has produced and maintains a Blockchain "Super Glossary" of terms related to cryptocurrency and blockchain issues. This crowd sourced consolidated glossary from multiple sources across the internet is available here:

[https://docs.google.com/document/d/1Vdwa4R\\_XXhSQFU7ELXheT55FyWorwZXbSWRYjYGetqA/edit?pli=1#](https://docs.google.com/document/d/1Vdwa4R_XXhSQFU7ELXheT55FyWorwZXbSWRYjYGetqA/edit?pli=1#)

<sup>8</sup> Cryptography is the study and practice of sending secure, encrypted messages between two or more parties. So long as the parties can match private and public keys, they can unlock access to the digital asset.

decentralized network (often a peer-to-peer network) made up of independent nodes that employ a ‘trustless’ system of verification, which makes the system self-governing and means users do not require an intermediary to verify transactions. Most cryptocurrency blockchains can also be described as being public, diffuse or distributed, and decentralized.

## **D. The Participants**

Like so many now-ubiquitous technologies, cryptocurrencies and digital assets have gone from obscure hobby for the technologically inclined to the mainstream. As their popularity has exploded, various platforms and service providers—often termed “Virtual Asset Service Providers” (VASPs)—have emerged. In addition to these new entities, traditional financial institutions have begun exploring ways of integrating digital assets into their existing suite of services.

### *1. Platforms and Exchanges*

A digital asset “exchange” or “platform” makes things easier for users by facilitating trades and serving as a “meeting place” for parties to identify potential counterparties to a transaction. Most exchanges facilitate transactions across numerous different cryptocurrencies or digital assets as well as fiat currencies. Of course, most digital assets can be used and transferred by people directly without the intermediary of an exchange or platform.

Many popular exchanges are **centralized exchanges** (CEXs). Many CEXs are subject to KYC, AML and licensing or registration laws and require that users verify their identities and use that information to mitigate the risks of unknown and potentially malicious actors. CEXs also facilitate transactions for only a finite universe of coins—rather than everything on the web—and thus shield their users from some of the risks associated with new and unestablished coins. Most CEXs also retain custody of user funds held on the platform. Several exchanges even provide free educational resources to customers—including information related to understanding and evaluating the financial risks of cryptocurrency. Examples include Coinbase, Blockchain.com, Crypto.com, FTX, Gemini, Binance or Kraken.

Other exchanges are decentralized or have a hybrid structure. A **decentralized exchange** (“DEX”) is a peer-to-peer marketplace, with no central authority (public or private). Instead, DEXs use smart contracts<sup>9</sup> that automatically execute under specified conditions and record the transaction to a blockchain. Generally speaking, DEXs facilitate exchanges across a broader spectrum of digital assets and tend to have lower fees than CEXs. Because they are decentralized, they generally include fewer safeguards (and thus more risk) and are less user-friendly. Examples of DEX’s are DexGuru, dYdX, AirSwap or Bisq.

There are many variations on the exchange model for cryptocurrency. For example, Robinhood is an investing platform but does not host custodial wallets yet is an app that enables investment in cryptocurrency (along with more classic investment vehicles such as stocks, ETFs,

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Cryptography allows digital currency transactions to be pseudonymous, secure, and “trustless” (which means no bank or other intermediary is required).

<sup>9</sup> Smart contracts are programs stored on a blockchain that run when predetermined conditions are met.

options, etc.). While most CEXs and DEXs charge fees, some platforms like Robinhood are fee-free choosing instead to act more like an agent for its users.

## 2. *Mining and Proof of Work*

Mining cryptocurrency is the process of validating cryptocurrency transactions on a blockchain network and adding them to a distributed ledger. The mining process also creates new coins, which are typically awarded to the miner along with transaction fees from the transactions verified through the mining process. With the explosion of blockchain technology, the act of verifying a blockchain (“mining”) has also exploded in both scope (with environmental concerns) and complexity (with concerns about securities). This paper is not intended to unwind the complexity of “staking” or offer views on the applicability of securities law. What is clear is that each cryptocurrency and/or blockchain have unique characteristics worthy of consideration.

Under the Proof-of-Work model, which was first introduced with Bitcoin, the mining process involves verifying transactions by solving a computationally difficult puzzle and the first miner to get the correct answer wins the race to confirm a new block of that cryptocurrency’s transactions which is added to its blockchain. Thus, miners are incentivized to secure the network by participating in the transaction validation because they can earn profits. The mining process guards against double-spending or other types of abuse.

While proof of work is an established method of verifying transactions, it requires a large amount of computing power. Some critics point to the large amount of energy consumed and the effects on the environment.

## 3. *Proof of Stake and Staking*

The Proof-of-Stake model allows existing owners to stake<sup>10</sup> their coins, which makes them eligible to be selected to validate a new block of transactions and add them to a blockchain. The cryptocurrency’s proof-of-stake protocol selects a validator to check if the transactions within a given block are accurate and, if so, to add it to a blockchain, as well as receiving rewards (more coins) for doing the work of validating. Generally, more coins staked correlates to a higher chance of being selected to do the work of validating. Most participants join a staking pool, where multiple contributors agree to share rewards for validation work done by the pool operator based on selection stemming from any pool participant’s staked coins.

More recently, several exchanges have begun to facilitate “yield farming” by their users, which is a practice whereby owners of cryptocurrency lend<sup>11</sup> or stake a portion of their cryptocurrency in exchange for receiving rewards (generally additional cryptocurrency). Exchanges put the loaned or staked cryptocurrency into pools that use the staked cryptocurrency to participate in blockchains’ proof-of-stake processes (among other things). The rewards for loaning

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<sup>10</sup> Staking coins mean pledging them to be used for verifying transactions, which results in them being locked up for however long they remain staked. Staked coins may be lost, however, as a penalty if the selected validator proposes adding a block with inaccurate information.

<sup>11</sup> Lending cryptocurrency often involves leasing it to a borrower, who may use it as part of a staking process or for other reasons.

and staking are most often stated in terms of Annual Percentage Yield (APY), much like a Certificate of Deposit (CD) at a traditional bank. Staking operates differently from one platform to the next, and sometimes involves a period where the staked cryptocurrency is “locked up” (or unavailable for trading or other use). A debate exists among policymakers looking at cryptocurrency networks about how to treat staking and staking rewards and whether they meet the definition of a security or are interest-bearing lending activity that should be subject to regulation.

#### *4. Tradition Financial Institutions*

More traditional financial institutions have begun to offer services related to cryptocurrencies and other digital assets. For example, both Charles Schwab and TD Ameritrade offer trading in Bitcoin futures to retail investors. And Fidelity offers certain digital asset services including custodial accounts, albeit only to institutional investors. Payment giants, including PayPal, Visa and MasterCard, are all offering or exploring integration of cryptocurrencies into their existing suite of services.

### **III. THE ROLE OF THE STATE ATTORNEY GENERAL**

State Attorneys General are the top legal officers of U.S. states, commonwealths, territories, and the District of Columbia. They serve as counselors to state government agencies and legislatures, and as representatives of the public interest. Their powers include issuing formal legal opinions interpreting state laws to state agencies; instituting civil suits on behalf of their state (usually civil enforcement actions often using Unfair and Deceptive Practices (UDEP) statutes); handling criminal prosecutions where authorized; and in some states enforcing state securities laws. Their powers also often include proposing legislation; acting as public advocates in areas of public interest, including consumer protection and antitrust; and operating victim compensation programs.

#### **A. State Attorney General Tools**

State Attorneys General have a variety of tools at their disposal to protect the public interest. They can institute civil actions to enforce state securities laws and UDEP statutes. They can also institute consumer protection actions pursuant to their common law *parens patriae* authority, which allows them to protect their citizens from harm to their health and well-being, and pursuant to the authority granted to them by certain federal statutes (such as section 15c of the Clayton Act, which allows state Attorneys General to bring civil actions for violations of sections 1 through 7 of the Clayton Act). Further, they can issue civil investigative demands or subpoenas; issue cease and desist letters; and enter into settlement agreements and consent decrees for various types of remedies, such as injunctions, monetary penalties, and consumer restitution.

#### **B. State Attorneys General as Primary Regulator**

Prior to the Great Depression, the states—not the federal government—primarily regulated securities. States continue to play a significant role in that space, with state Attorneys General at forefront. In many states (*e.g.*, New York, Delaware, Maryland or South Carolina), the Attorney General is the officer with original jurisdiction for enforcing state securities laws. Certain other states house the securities regulator within the Attorney General’s office but gives that regulator



semi-independent authorities (*e.g.*, New Jersey). Most other states (*e.g.*, Connecticut, Florida, Illinois, Texas, Colorado (Division of Securities) or Vermont (Department of Financial Regulation)) have independent securities regulators whom the Attorneys General advise and support.

Certain state statutes grant state Attorneys General broad powers or make them the primary regulator of securities—authority that may include digital assets. Under New York statute, the New York Attorney General has the authority to “[p]rosecute and defend all actions and proceedings in which the state is interested,”<sup>12</sup> and to enforce the state’s securities and commodities laws. Similarly, under California statute, the California State Attorney General “has charge, as attorney, of all legal matters in which the State is interested,” and may also enforce the state’s securities and commodities laws.

Some states have also passed laws that are specific to the regulation of digital assets and VASPs. New York, for example, has a [licensing regime](#) called BitLicense, which requires any person engaging in “virtual currency business activity” to obtain a license from the New York Department of Financial Services. Certain states, such as [Wyoming](#) and [Texas](#), have incorporated digital assets (or subsets thereof) into their respective state Uniform Commercial Codes. [Wyoming](#) and [Montana](#) have exempted utility tokens from their respective state securities laws under certain circumstances. And [Wyoming](#) and [Nebraska](#) allow for the creation of state-chartered digital asset depository institutions (sometimes called “digital asset banks”). *See also* Appendix B.

Wyoming is notable; despite its western urban makeup, it has embraced cryptocurrency. For example, on April 21, 2021, Wyoming Governor Mark Gordon signed Bill 38, allowing the state to legally recognize decentralized autonomous organizations (DAOs) as limited liability companies. Generally, DAOs make governance decisions and implement certain actions through the use of blockchain-based “smart contracts” (*i.e.*, pieces of computer code that execute specified functions when given certain data). DAOs do not have centralized managers or executives. Wyoming’s law requires that a DAO maintain its presence in the state through a registered agent and include proper designation in its articles of organization (self-identifying as a DAO, DAO LLC or LAO (limited liability autonomous organization)) but ensures that members of a DAO will not be held personally liable for the debts and liabilities of the company, addressing a concern that a DAO could be construed as a partnership.

Several leading states have established a regulatory ‘sandbox’ program to support innovation in the space while further studying cryptocurrencies and related blockchain technology innovations:

- Arizona (A.R.S. §§ 41-5601 to 41-5612) – likely the first sandbox including digital assets in 2018, grants participants limited access to Arizona’s market to test innovative financial products or services without first obtaining full state

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<sup>12</sup> The same New York statute also allows the New York State Attorney General to, “[u]pon request of . . . the head of any . . . department, authority, division or agency of the state,” investigate and prosecute “the alleged commission of any indictable offense . . . in relation to any matters connected with such department”; and to, “with the approval of the governor, and when directed by the governor . . . inquire into matters concerning the public peace, public safety and public justice.” NY EXC § 63.



licensure or other authorization that otherwise may be required. The Arizona Attorney General's Office is responsible for the admission process into and oversight of the Sandbox.

- Florida (Fla. Stat. §559.952(4)(a)(3) through (14)) – the Florida Financial Technology Sandbox allows for the sandbox permission to substitute for a money transmitter license during the license period and relaxes a few other money transmitter requirements.
- Nevada (NRS §§ 657A.100 to 657A.620) – has developed a “Regulatory Experimentation Program for Product Innovation,” which includes digital assets.
- West Virginia (W. Va. Code § 31A-8G-4(d), (e)) – permits a licensee to forego application for a separate money transmitter license under the West Virginia Fintech Regulatory Sandbox.
- Utah's regulatory sandbox program was established in 2019 ([H.B. 378](#)), and allows approved applicants a period of 24 months to test innovative financial products or services on a restricted basis without a license or authorization to act under Utah state law.
- Wyoming (Wyo. Stat. §§ 40-29-101 through 40-29-109; and 021.0008.1 Wyo. Code R. §§ 1 to 8; Wyo. Stat. § 40-22-104(b)) – the Wyoming Financial Technology Sandbox explicitly applies to money transmission licensing.

The program rules and structure differ from state to state, but generally exempt sandbox participants from state registration requirements and are often administered by state agencies or the state Attorney General. Some states, like Utah, have also created a task force to study digital assets and make policy recommendations related to blockchain and related technologies.<sup>13</sup>

### **C. Other Regulatory Models**

One potential path for enforcement of digital assets would be for states to erect similar regulatory schemes for digital assets rather than leave things to the federal government. Part of that path could be ensuring that federal securities law and other regulatory schemes do not sweep too broadly. State enforcers could run into issues with preemption and related doctrines if the courts decide that federal law provides federal agencies with primary regulatory authority over digital assets.

### **D. State Attorney General Investigations and Enforcement**

The power to bring civil and criminal enforcement actions makes state Attorneys General logical entities to pursue fraud and other illegality in the digital asset space. Blockchain technology presents new investigative challenges, but it presents new opportunities as well. For example, security firms like Chainalysis, Elliptic and Ciphertrace can assist enforcement agencies in identifying bad actors who use digital assets to commit crimes. Because a blockchain is a permanent record, it is possible to investigate long-ago transfers of value with the right technological tools. Also important, law enforcement has enjoyed growing success in seizing

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<sup>13</sup> Utah HB 335, was sent to the governor for signature of March 14, 2022. See <https://le.utah.gov/~2022/bills/static/HB0335.html>.

illicitly obtained cryptocurrency. In November 2021, IRS Criminal Investigations (IRS-CI) reported that from non-tax investigations alone it had seized over \$3.5-billion worth of cryptocurrency in 2021.<sup>14</sup>

Traditional investigative techniques remain relevant, too. Rifling through consumer complaints, interviewing victims and witnesses, staying in close contact with law enforcement, and communicating with other state Attorneys General—these time-tested strategies are essential to combating misconduct in the digital asset space. And because such misconduct is often multi-jurisdictional, state Attorneys General should consider sharing resources (including specialists) and expertise with each other. Collaboration across offices will avoid duplicating efforts and tends to ensure that nothing is missed.

State Attorneys General should also work with federal law enforcement where appropriate. Federal enforcement agencies are experts in investigating national and global crimes generally, and in investigating cybercrimes specifically. Federal enforcement agencies also have unique authorities—such as the Computer Fraud and Abuse Act—that they can bring to bear on wrongdoers. Indeed, the general public often thinks of the FBI when they think of cybercrime or crimes involving technology. But the FBI often will not take small, one-off or individual cases leaving an enforcement gap. Many times, these cases will come into a state in the form of a consumer complaint, or these issues may end up with other law enforcement partners such as the U.S. Secret Service.

#### **E. Recent State Civil and Regulatory Enforcement Actions**

States have prosecuted VASPs for various alleged violations of state law. One recent example is BlockFi, which starting in July 2021 was pursued by the [New Jersey Bureau of Securities](#), the [Vermont Department of Financial Regulation](#), the [Alabama Securities Commission](#), the [Kentucky Department of Financial Institutions](#), and state agencies from many other states. BlockFi is a financial services firm that purports to generate revenue through cryptocurrency trading, lending, and borrowing and by engaging in proprietary trading, and its interest-bearing cryptocurrency accounts have raised at least \$14.7 billion worldwide. It was alleged that BlockFi was violating state securities laws in connection with its offers and sales of unregistered cryptocurrency interest-bearing account products. In February 2022, BlockFi [settled](#) with the SEC and 32 states for \$100 million, with \$50 million to go to the SEC and \$50 million to the 32 states. Similarly, since September 2021, Celsius has been pursued by the [New Jersey Bureau of Securities](#), the [Alabama Securities Commission](#), the [Texas State Securities Board](#), and the [Kentucky Department of Financial Services](#) for violating state securities laws in connection with its sale of unregistered securities in the form of interest-earning cryptocurrency products.

New York has been particularly active related to policing digital assets.<sup>15</sup> In February 2022, the New York Attorney General [settled](#) with Bitfinex and Tether over allegations that the

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<sup>14</sup> See Crypto Crime Report 2022 (Chainalysis), <https://go.chainalysis.com/2022-Crypto-Crime-Report.html> (free registration required) (reporting on cryptocurrency related crime trends Citing IRS-CI Annual Report 2021).

<sup>15</sup> For additional information about New York's engagement with the cryptocurrency industry, please visit the [NY Attorney General webpage](#).

companies had made false statements about the backing of the “tether” stablecoin, and about the movement of hundreds of millions of dollars between iFinex (the operator of Bitfinex) and Tether to cover up the truth about massive losses by Bitfinex. The crux of the matter appeared to be alleged false statements that Tether offered a stablecoin backed by the U.S. dollar. NY argued the stablecoin was not fully backed by U.S. dollars. As part of that settlement, Bitfinex and Tether agreed to pay \$18.5 million and end all trading activity with New Yorkers. Several months earlier, in September 2021, the New York Attorney General [settled](#) with GTV Media Group and its parent company (Saraca Media Group), who agreed to pay \$479.9 million, over allegations that they unlawfully sold stocks and two digital instruments promoted as cryptocurrencies without registering in New York. Also in September 2021, the New York Attorney General obtained a [judgment](#) for \$3 million and injunctive relief against Coinseed and its founder, who allegedly had defrauded thousands of investors out of millions of dollars. And in October 2021, the New York Attorney General sent a [cease and desist letter](#) to two cryptocurrency lending platforms, demanding that they immediately cease their unregistered and unlawful activities in New York, and an [informational letter](#) to three other cryptocurrency lending platforms, directing them to provide information about their activities and products.

#### **IV. PROTECTING AGAINST FRAUD**

##### **A. Use of Cryptocurrencies in Traditional Cybercrimes**

Cybercrimes long predate cryptocurrency,<sup>16</sup> but hackers and other cybercriminals have increasingly demanded ransoms in cryptocurrencies, presumably because of the reduced barriers to cross-border money transfers, perceived anonymity,<sup>17</sup> and the immediate nature of the transaction. For example, in May 2021, a Russia-based criminal group called “DarkSide” launched a cyberattack on Colonial Pipeline stealing 100 gigabytes of data before locking computers with ransomware and demanding a ransom paid in Bitcoin (which Colonial Pipeline paid).

There is strong evidence, though, that hackers are foolish to seek ransoms via assets that a blockchain permanently records and traces. The immutable nature of a blockchain allows for a clear record of the flow of money, which means that investigators can forever track back ownership provided they can overcome certain technological masking techniques.<sup>18</sup> So, in the pipeline example, the Department of Justice later reported recovering 63.7 of the 75 bitcoin that Colonial

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<sup>16</sup> As used here, Cybercrimes refer to criminal behavior conducted through the use of technology. One recounting of the history of cybercrime places the first cybercrime in 1834, when two thieves hacked the French Telegraph System and stole financial market information. *See* “Cyber CEO: The History of Cybercrime, from 1834 To Present,” <https://www.herjavecgroup.com/history-of-cybercrime/> (accessed Mar. 14, 2022).

<sup>17</sup> This white paper does not take a position on whether cryptocurrencies, because they are supported by public blockchains, are or are not “anonymous.” This question is open to debate depending on whether anonymity is tied to identifying the actual individual that owns a particular wallet traced to an illegal transaction and also whether the techniques like “chain-swapping” are utilized, etc. Anonymity may not be the best concept to consider the question, and instead concealment or avoidance might also be considered when identifying a bad actor abusing the technology.

<sup>18</sup> The immutable nature of blockchains is often cited as a strength and as advantageous to law enforcement. Of course, if assets are taken off a blockchain through conversion to another type of asset (i.e. converting Bitcoin to fiat currency) then the immutable nature of a blockchain becomes less relevant or at least in tension with the fungibility of virtual assets.

Pipeline paid. This was achieved by seizing a Bitcoin wallet that DarkSide ransomware actors used to collect the payment.<sup>19</sup>

The recent arrest and charging of Heather Morgan and Ilya Lichtenstein for money laundering related to the infamous 2016 Bitfinex hack is interesting in that they did much to hide their conduct yet their efforts to hide the movement of funds was still able to be deciphered. According to public sources,<sup>20</sup> Lichtenstein and Morgan: (1) used accounts set up with fictitious identities; (2) moved the stolen funds in a series of small amounts, totaling thousands of transactions, as opposed to moving the funds all at once or in larger chunks (i.e. smurfing); (3) utilized computer programs to automate transactions, a laundering technique that allows for many transactions to take place in a short period of time; (4) layered the stolen funds by depositing them into accounts using vicecoins (VCEs) and darknet markets and then withdrawing the funds, which obfuscates the trail of the transaction history by breaking up the fund flow; (5) converting the BTC to other forms of virtual currency, including anonymity-enhanced virtual currency, in a practice known as “chain hopping”; and (6) using U.S.-based business accounts to legitimize activity.

Private firms have developed sophisticated techniques to track the movement of cryptocurrency and identify key actors. For example, Chainalysis, a blockchain data company, recently debuted the ability to de-mix CoinJoin transactions effectuated through Wasabi Wallet—a private desktop Bitcoin wallet that aims to anonymize transactions by mixing several together. This led to a breakthrough in identifying the likely hacker behind another notorious 2016 hack that made off with millions of ETH (the native token of the Ethereum blockchain).<sup>21</sup>

## **B. Digital Asset Scams**

As with any market involving substantial value, scammers have targeted the digital asset space. One common form of scam is called a “rug pull” and essentially entails a developer selling a coin to investors and then stealing the value from them by absconding with the purchasers’ funds. Fraudsters largely execute these scams through decentralized exchanges in which users buy their products directly without intermediaries (such as a centralized exchange) or other oversight.

A recent example is the scam related to the token, Squid, which was modeled after the popular Netflix show, Squid Game. In order to sell the token, buyers had to win one of various games to gather “marbles.” The problem is, those games were not live. So, no one could win any marbles. And the token was not related to Netflix or the producers of Squid Game. The value of the token plummeted from \$2,856.00 to below one penny in one day. The developers of the tokens

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<sup>19</sup> See “U.S. Has Recovered Some Of The Millions Paid In Ransom To Colonial Pipeline Hackers,” NPR, <https://www.npr.org/2021/06/07/1004050873/u-s-retrieves-some-of-the-colonial-pipeline-ransom?live=1> (accessed Mar. 14, 2022).

<sup>20</sup> See Statement of Facts, available at <https://www.justice.gov/opa/press-release/file/1470186/download> (accessed on Mar. 15, 2022).

<sup>21</sup> See “Austrian Programmer And Ex Crypto CEO Likely Stole \$11 Billion Of Ether,” <https://www.forbes.com/sites/laurashin/2022/02/22/exclusive-austrian-programmer-and-ex-crypto-ceo-likely-stole-11-billion-of-ether/?sh=600bc9687f58> (accessed Mar. 14, 2022).

walked away with millions of dollars after selling their positions. The buyers walked away with worthless tokens.

Another scam is the “pump-and-dump” scheme involving digital assets. These scams—made famous in *The Wolf of Wall Street*—are not new, nor somehow unique to digital assets. “Pump-and-dump” scams seek to boost the price of an asset through bogus recommendations comprised of false, deceptive, or misleading statements. Those orchestrating the promotion already have established positions in the asset’s value. The promotion drives up the price, at which point the scammers liquidate their position and pocket the profits—all as the buyers lose substantial value.

Digital assets are vulnerable to this sort of scheme because it is relatively easy to create (and then promote) a new token. People can create billions of digital assets (i.e., coins) that cost a fraction of a penny. If the value of these creations increases at all, the scammer’s profits skyrocket.

Some scams are perpetrated in conjunction with other criminal techniques related to identity theft. In Massachusetts, for example, a man recently pleaded guilty to engaging in a “SIM-swapping”<sup>22</sup> scheme seeking to gain access to other’s accounts, stealing more than a half-million dollars in cryptocurrency. The man was charged with conspiracy, wire fraud, computer fraud and abuse as well as aggravated identity theft.

Like any fraud, these warrant attention from law enforcement. But at the same time, like any investment endeavor, risks are different for each investor and investment. When it comes to cryptocurrency, volatility is often the hallmark and benchmark. Consumers who are sophisticated enough to buy tokens through a decentralized exchange—an act that requires a relatively high degree of technological skill—are more likely aware of the risks they are taking and should calibrate their investment strategies accordingly. Those who are more risk-averse can rely more heavily on established centralized exchanges to mitigate risks as they generally incorporate greater protections for their users. These market realities should inform the perspective of enforcement authorities.

## **V. ESTABLISHING A PREDICTABLE AND CERTAIN RULE OF LAW**

The existing framework for regulating financial markets and financial institutions is extensive and was developed long ago to solve very different problems from those that digital assets pose. In March 2022, President Biden signed an [executive order](#) establishing six key priority areas for digital assets (consumer and investor protection, financial stability, illicit finance, U.S. leadership in the global financial system and economic competitiveness, financial inclusion, and responsible innovation) for further research and examination by federal regulatory agencies, along with prioritizing the study of a central bank digital currency (CBDC). While the federal government is now under a whole-of-government approach pursuant to this Executive Order, states must play a significant role in the day-to-day.

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<sup>22</sup> SIM-swapping is the practice of a fraudster using an individual’s personal information – often obtained via an email “phishing” scams, malware, the dark web or social media research – to contact the victim’s phone company and reissuing a new SIM card used by the fraudster. This type of fraud can be used to effectively defeat two-factor authentication.

## A. Federal Laws and Regulations

Extensive federal regulation governs traditional financial networks. These laws and regulations empower various federal regulators to oversee securities, derivatives, banking, and taxation. Many federal agencies have issued regulations, guidance and policies related to cryptocurrency, some of which impose know your customer (“KYC”) obligations and, more broadly, the anti-money laundering and combating the financing of terrorism (“AML/CFT”) scheme. The handful of major domestic CEXs apply KYC obligations to their customers and have programs to ensure AML/CFT compliance.

But while agencies have begun issuing their views on federal law, Congress has never adopted a particular regulatory regime for digital assets and has passed few federal laws that expressly regulate activities related to digital assets. Chiefly, the [Infrastructure Investment and Jobs Act](#), passed in November 2021, regulates digital assets acquired on or after January 1, 2023, mandates that “brokers” must report their gains from digital asset transactions to the Internal Revenue Service (“IRS”), and directs any “person” who receives more than \$10,000 in digital assets must collect personal information and file a report with the IRS. The Act did not, however, include the Department of Treasury’s [proposed rule](#) requiring cryptocurrency exchanges to report foreign owners of U.S. accounts, information the U.S. could then share with its global trading partners in exchange for data on U.S. taxpayers trading in cryptocurrency in other countries.

Additional federal laws that regulate activities involving digital assets may be forthcoming; numerous bills are pending in Congress.<sup>23</sup> For example, in the wake of recent U.S. economic sanctions against Russia, U.S. Senator Elizabeth Warren has recently announced [a new bill](#) entitled the Digital Assets Sanctions Compliance Enhancement Act to address her apparent concerns about the use of cryptocurrency to avoid economic sanctions. And as noted above, President Biden has also ordered the study of digital assets to develop a “whole-of-government” approach to regulation.

## B. Competing Claims of Regulatory Authority

Despite the absence of federal laws specifically addressing digital assets, federal regulators have nonetheless begun to claim jurisdiction. Some federal regulators, particularly the Securities and Exchange Commission (“SEC”) and the Commodities Futures Trading Commission (“CFTC”), have been more assertive than others. With respect to the SEC, Gary Gensler, the Chair of the SEC, has made public statements throughout 2021 and 2022 asserting that many digital assets are securities, and that much of the digital assets industry is subject to SEC jurisdiction.<sup>24</sup> However,

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<sup>23</sup> Just a few of the bills that have been introduced include: [HR 6006](#) - Keep Innovation in America (Rep. McHenry); [H.R.5496](#) - Clarity for Digital Tokens Act of 2021 (Rep. McHenry); [H.R.4451](#) - Securities Clarity Act (Rep. Emmer); [H.R. 4741](#) - Digital Asset Market Structure and Investor Protection Act (Rep. Beyer). And other action is occurring in Congress such as Senator Toomey requesting “Feedback on Clarifying Laws Around Cryptocurrency and Blockchain Technologies” (Toomey [request](#) for comment).

<sup>24</sup> See Remarks Before the Aspen Security Forum, <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03> (accessed Mar. 14, 2022); Transcript: The Path Forward: Cryptocurrency with Gary Gensler, <https://www.washingtonpost.com/washington-post-live/2021/09/21/transcript-path-forward-cryptocurrency-with-gary-gensler/> (accessed Mar. 14, 2022); SEC’s Gensler Says Crypto ‘Fits in Our Broad Remit’: Report, <https://www.coindesk.com/policy/2021/12/13/secs-gensler-says-crypto-fits-in-our-broad-remit-report/> (accessed Mar. 14, 2022); SEC’s Gensler Wants Greater Scrutiny for Crypto Exchanges: Report,



another SEC Commissioner, Hester Peirce, has expressed concerns about the lack of clarity in the existing regulatory regime stating, “There isn’t clarity around who—if anyone—should be regulating crypto exchanges . . . It would be quite difficult for most of the platforms to register under the existing framework, partly because they do things differently than traditional securities exchanges.”<sup>25</sup>

Nonetheless, the SEC recently [proposed a rule](#) amending the definition of “exchange” under the Securities and Exchange Act of 1934 to include “communication protocol systems that make available for trading any type of security,” implying an application to cryptocurrency exchanges and DeFi platforms. And, over the last several years, the SEC has initiated a multitude of investigations and enforcement actions that suggest it believes it has the authority to enforce securities registration and securities fraud laws on a variety of digital assets and VASPs.<sup>26</sup>

As for the CFTC, various publications issued by the agency over the last several years assert that virtual currencies (including Bitcoin) are commodities, and that the CFTC thus has the authority to regulate derivatives on virtual currencies and enforce the Commodity Exchange Act’s anti-fraud and anti-manipulation provisions on activities involving virtual currencies.<sup>27</sup> At least

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<https://www.coindesk.com/policy/2022/01/20/secs-gensler-wants-greater-scrutiny-for-crypto-exchanges-report/> (accessed Mar. 14, 2022); SEC chair Gensler pitches his crypto vision at exclusive House Democrat event, <https://www.theblockcrypto.com/post/134654/scoop-sec-chair-gensler-pitches-his-crypto-vision-at-exclusive-house-democrat-event> (accessed Mar. 14, 2022).

<sup>25</sup> See February 25, 2022 Barron’s interview with SEC Commissioner Hester Pierce, <https://www.barrons.com/articles/sec-commissioner-and-crypto-mom-hester-peirce-is-amazed-a-bitcoin-etf-hasnt-been-approved-yet-51645786345> (accessed Mar. 20, 2022)

<sup>26</sup> See SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities, <https://www.sec.gov/news/press-release/2017-131> (accessed Mar. 14, 2022); SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering, <https://www.sec.gov/news/press-release/2020-338> (accessed Mar. 14, 2022); SEC Charges Decentralized Finance Lender and Top Executives for Raising \$30 Million Through Fraudulent Offerings, <https://www.sec.gov/news/press-release/2021-145> (accessed Mar. 14, 2022); SEC Charges Global Crypto Lending Platform and Top Executives in \$2 Billion Fraud, <https://www.sec.gov/news/press-release/2021-172> (accessed Mar. 14, 2022); BlockFi Agrees to Pay \$100 Million in Penalties and Pursue Registration of its Crypto Lending Product, <https://www.sec.gov/news/press-release/2022-26> (accessed Mar. 14, 2022); SEC investigating NFT market over potential securities violations: Reports, <https://coingecko.com/news/sec-investigating-nft-market-over-potential-securities-violations-reports> (accessed Mar. 14, 2022).

<sup>27</sup> See LabCFTC’s October 2017 Primer on Virtual Currencies, [https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc\\_primer currencies100417.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primer currencies100417.pdf) (accessed Mar. 14, 2022); CFTC’s January 2018 Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets, [https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/backgrounder\\_virtualcurrency01.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf) (accessed Mar. 14, 2022); CFTC’s December 2019 “Bitcoin Basics,” [https://www.cftc.gov/sites/default/files/2019-12/oceo\\_bitcoinbasics0218.pdf](https://www.cftc.gov/sites/default/files/2019-12/oceo_bitcoinbasics0218.pdf) (accessed Mar. 14, 2022); CFTC’s December 2019 “An Introduction to Virtual Currency,” [https://www.cftc.gov/sites/default/files/2019-12/oceo\\_aivc0218.pdf](https://www.cftc.gov/sites/default/files/2019-12/oceo_aivc0218.pdf) (accessed Mar. 14, 2022); CFTC’s June 2020 final interpretative guidance on “Retail Commodity Transactions Involving Certain Digital Assets,” <https://www.cftc.gov/sites/default/files/2020/06/2020-11827a.pdf> (accessed Mar. 14, 2022); The CFTC’s Role in Monitoring Virtual Currencies, available at <https://www.cftc.gov/digitalassets/index.htm> (accessed Mar. 14, 2022); LabCFTC’s December 2020 Digital Assets Primer, available at <https://www.cftc.gov/PressRoom/PressReleases/8336-20> (accessed Mar. 14, 2022).



two courts have agreed with the CFTC that virtual currencies are commodities.<sup>28</sup> In recent [testimony](#) before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry, Rostin Benham, the Chair of the CFTC, argued that the CFTC also should have authority to regulate cash markets for certain types of digital assets, potentially pitting the CFTC against the SEC in a fight for jurisdiction over digital assets. The CFTC’s recent enforcement actions related to digital assets reaffirm its conviction that virtual currencies are commodities subject to CFTC regulation,<sup>29</sup> and evince its position that certain [stablecoins](#) are commodities subject to the same oversight.

Other federal regulators have staked their claim to regulating activities involving digital assets as well, albeit not as assertively as the SEC or the CFTC:

- FinCEN – The Financial Crimes Enforcement Network (“FinCEN”) has issued guidance declaring that transactions involving the transmission of convertible virtual currencies (“CVCs”), which FinCEN has stated apply to certain VASP models, are subject to the AML/CFT obligations of the Bank Secrecy Act (“BSA”) and related regulations.<sup>30</sup> FinCEN has also brought a number of enforcement actions against operators of VASPs for failure to comply with the AML/CFT requirements of the BSA and related regulations.<sup>31</sup>
- OFAC – The Office of Foreign Assets Control (“OFAC”) has issued sanctions compliance [guidance](#) for the virtual currency industry and [designated](#) a virtual currency exchange for its part in facilitating financial transactions for ransomware actors.
- OCC – The Office of the Comptroller of the Currency (“OCC”) has [declared](#) that national banks and federal savings associations can engage in certain

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<sup>28</sup> See *CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492 (D. Mass. 2018); *CFTC v. McDonnell*, 287 F. Supp. 3d 213 (E.D.N.Y. 2018).

<sup>29</sup> See CFTC Charges Two Individuals with Multi-Million Dollar Digital Asset Pump-and-Dump Scheme, <https://www.cftc.gov/PressRoom/PressReleases/8366-21> (accessed Mar. 14, 2022); CFTC Charges 14 Entities for Failing to Register as FCMs or Falsely Claiming to be Registered, <https://www.cftc.gov/PressRoom/PressReleases/8434-21> (accessed Mar. 14, 2022); CFTC Orders Event-Based Binary Options Markets Operator to Pay \$1.4 Million Penalty, <https://www.cftc.gov/PressRoom/PressReleases/8478-22> (accessed Mar. 14, 2022); CFTC Charges Four Operators for \$44 Million Bitcoin Ponzi and Misappropriation Schemes, <https://www.cftc.gov/PressRoom/PressReleases/8498-22> (accessed Mar. 14, 2022).

<sup>30</sup> See FinCEN’s March 2013 Guidance on the “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf> (accessed Mar. 14, 2022); FinCEN’s May 2019 Guidance on the “Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies,” <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf> (accessed Mar. 14, 2022); Leaders of CFTC, FinCEN, and SEC Issue Joint Statement on Activities Involving Digital Assets, [https://www.fincen.gov/sites/default/files/2019-10/CVC%20Joint%20Policy%20Statement\\_508%20FINAL\\_0.pdf](https://www.fincen.gov/sites/default/files/2019-10/CVC%20Joint%20Policy%20Statement_508%20FINAL_0.pdf) (accessed Mar. 14, 2022).

<sup>31</sup> See FinCEN Fines BTC-e Virtual Currency Exchange \$110 Million for Facilitating Ransomware, Dark Net Drug Sales, <https://www.fincen.gov/news/news-releases/fincen-fines-btc-e-virtual-currency-exchange-110-million-facilitating-ransomware> (accessed Mar. 14, 2022); First Bitcoin “Mixer” Penalized by FinCEN for Violating Anti-Money Laundering Laws, <https://www.fincen.gov/news/news-releases/first-bitcoin-mixer-penalized-fincen-violating-anti-money-laundering-laws> (accessed Mar. 14, 2022).

cryptocurrency, distributed ledger, and stablecoin activities—provided they first demonstrate to the OCC that they have adequate controls in place—and has [recommended](#), along with the President’s Working Group on Financial Markets and the Federal Deposit Insurance Corporation, that Congress “act promptly” to enact legislation regulating payment stablecoins.

- CFPB – Rohit Chopra, the director of the Consumer Financial Protection Bureau (“CFPB”), has [publicly stated](#) that the CFPB “will be taking several steps” related to the stablecoin market, including “closely engag[ing] with other members of the Financial Stability Oversight Council to determine whether to initiate designation proceedings[.]”
- DOJ – While not a federal regulator, the Department of Justice (“DOJ”) has also claimed authority to enforce federal laws that purportedly apply to digital assets, particularly laws prohibiting money laundering and requiring compliance with AML/CFT obligations. The DOJ has asserted such authority through public statements and publication,<sup>32</sup> and has also been active in pursuing individuals and entities transacting in digital assets, often working alongside federal regulators bringing their own enforcement actions.<sup>33</sup> The DOJ’s [creation](#) of its National Cryptocurrency Enforcement Team (“NCET”) last October, and the [appointment](#) of the first director of the NCET last month, signal the DOJ’s intent to further scrutinize, and increase enforcement efforts in the digital asset industry.

### C. International Guidelines

Finally, certain international bodies, such as the Financial Stability Board (“FSB”) and the Financial Action Task Force (“FATF”), have also examined the roles and implications of digital assets. These bodies are not regulatory in nature, but they issue international guidelines for their member countries to follow with respect to the body’s relevant subject area (*e.g.*, the stability of

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<sup>32</sup> See DOJ’s October 2020 Cryptocurrency Enforcement Framework, <https://www.justice.gov/archives/ag/page/file/1326061/download> (accessed Mar. 14, 2022); Attorney General William P. Barr Announces Publication of Cryptocurrency Enforcement Framework, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-publication-cryptocurrency-enforcement-framework> (accessed Mar. 14, 2022); Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team, <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team> (accessed Mar. 14, 2022); Justice Department Announces First Director of National Cryptocurrency Enforcement Team, <https://www.justice.gov/opa/pr/justice-department-announces-first-director-national-cryptocurrency-enforcement-team> (accessed Mar. 14, 2022).

<sup>33</sup> See United States Files \$100 Million Civil Complaint Against Digital Currency Exchange BTC-e And Chief Owner-Operator Alexander Vinnik, <https://www.justice.gov/usao-ndca/pr/united-states-files-100-million-civil-complaint-against-digital-currency-exchange-btc-e> (accessed Mar. 14, 2022); John David McAfee And Executive Adviser Of His Cryptocurrency Team Indicted In Manhattan Federal Court For Fraud And Money Laundering Conspiracy Crimes, <https://www.justice.gov/opa/pr/ohio-resident-pleads-guilty-operating-darknet-based-bitcoin-mixer-laundered-over-300-million> (accessed Mar. 14, 2022); Ohio Resident Pleads Guilty to Operating Darknet-Based Bitcoin ‘Mixer’ That Laundered Over \$300 Million, <https://www.justice.gov/opa/pr/ohio-resident-pleads-guilty-operating-darknet-based-bitcoin-mixer-laundered-over-300-million> (accessed Mar. 14, 2022); Two Arrested for Alleged Conspiracy to Launder \$4.5 Billion in Stolen Cryptocurrency, <https://www.justice.gov/opa/pr/two-arrested-alleged-conspiracy-launder-45-billion-stolen-cryptocurrency> (accessed Mar. 14, 2022).

international financial systems and markets for the FSB, and AML/CFT for the FATF). Several international bodies have issued guidance specifically related to digital assets, including the [FSB](#) (on the risks of crypto-assets to financial stability), [FATF](#) (on the AML/CFT compliance risks associated with virtual assets and VASPs), the [World Bank](#) (on the application of CBDCs to payment and settlement systems) and the [Bank for International Settlements](#) (“BIS”) (on the extent to which CBDCs could be used for cross-border payments).

## **APPENDICES**

### **VI. Appendix A: Directory of POCs for exchanges, forensic firms**

Available upon request to the Attorney General Alliance General Counsel David Blake at [david.blake@agalliance.org](mailto:david.blake@agalliance.org).

### **VII. Appendix B: State of the Law (states)<sup>34</sup>**

#### **A. Alabama**

A license is required for selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. “Monetary value” means a medium of exchange, including virtual or fiat currencies, whether or not redeemable in money. ([Ala. Code § 8-7A-2](#); [Ala. Code § 8-7A-5](#)). *A bill is pending that would exempt virtual currencies from taxation.*

#### **B. Alaska**

[Alaska Stat. § 06.55.990\(15\)](#) defines money services as, “selling or issuing payment instruments or stored value, or receiving money or monetary value for transmission.” The Alaska Division of Banking and Securities states, “[c]ompanies dealing with fiat and virtual currencies (cryptocurrencies) must apply for a money transmitter license, then enter into a Limited Licensing Agreement (LLA) with the State of Alaska.”

#### **C. Arizona**

The definition of a money transmitter is found at [Ariz. Rev. Stat. § 6-1201\(\)](#). While the definition does not specifically apply to digital currency, exchanges Coinbase and Binance interpret it to require them to acquire Arizona money transmitter licenses. *A number of bills are currently pending in the state legislature, including bills that would make Bitcoin legal tender, allow for taxes and fees to be paid with digital assets, and to pay state employees in cryptocurrency.*

#### **D. Arkansas**

Arkansas’s definition of money transmission expressly includes virtual currency; [A.C.A. § 23-55-102\(12\)\(A\)](#), and allows investment in virtual currency by money transmitters; [A.C.A. § 23-55-701\(b\)](#). *Virtual currencies are subject to the state’s Uniform Commercial Code; A.C.A. § 4-9-102(b).* However, Arkansas has provided “no-action” letters to digital asset-issuing businesses freeing them from money transmission licensing requirements, e.g., [In re Mythical, Inc.](#) (June 22, 2020) (video game internal currency); [In re River Financial, Inc.](#) (May 21, 2020) (selling own reserves of Bitcoin)

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<sup>34</sup> The bulk of this information is gleaned from a 2021 Bloomberg Law Article: <https://pro.bloomberglaw.com/brief/cryptocurrency-laws-and-regulations-by-state/> Updates, if available, were added using italicized text.

## **E. California**

The Department of Financial Protection and Innovation has not decided whether to regulate digital currency transmission under California's Money Transmission Act, see [DFPI Statement re: Coinbase](#) (Jan. 27, 2015); [DFPI Opinion Request](#) (Oct. 4, 2019).

The DFPI regularly provides no-action letters regarding digital currency businesses [on its website](#). Digital currency ATMs are often exempted, and a [May 27, 2021 opinion letter](#) exempted a peer-to-peer digital currency transaction platform from money transmission licensing.

Several bills are pending in the state legislature, including bills that would authorize the use of digital currencies as a method of payment for goods and services, including for payments to the state.

## **F. Colorado**

[Colorado's 2018 interim guidance](#) requires licensing as a money transmitter when using digital currency as a payment system. *The 2019 Colorado Digital Token Act exempted cryptocurrencies with a "primarily consumptive purpose" from several securities regulations. Bills are pending in the legislature, including some that have passed the Senate, that would make the state more friendly to virtual currency and a bill authorizing the issuance of a security token to fund capital financing. By Executive Order, the state will accept Bitcoin and Ethereum assets for payment of taxes in 2022.*

## **G. Connecticut**

A money transmitter license is required when transmitting digital currency, see [Conn. Gen. Stat. § 36a-596\(18\)](#); [Conn. Gen. Stat. § 36a-597](#). The licensee must state that it is dealing in virtual currency. [Conn. Gen. Stat. § 36a-598\(a\)\(iv\)](#). Connecticut may apply additional scrutiny or requirements on virtual currency money transmitters. [Conn. Gen. Stat. § 36a-600\(c\)](#), (d); [Conn. Gen. Stat. § 36a-602\(a\)](#). Money transmitters must hold reserves in the same type and amount of virtual currency as all outstanding transactions. [Conn. Gen. Stat. § 36a-603\(b\)](#).

Connecticut's Department of Banking has issued advisory opinions stating that digital currency exchanges are money transmitters, but digital currency "ATMs" are not. See Connecticut Department of Banking, "[Virtual Currency Money Transmission FAQs](#)."

## **H. Delaware**

[5 Del. C. § 2303](#) requires a license for the undefined phrase "engage in the business of receiving money for transmission or transmitting the same." Virtual currency exchanges Coinbase and Binance maintain Delaware money transmitter licenses. *State law defines virtual currency and game-related digital content and requires reporting of virtual currency, but exempts game-related digital content with minimal or no value from regulation.*

## **I. District of Columbia**

Dealing in digital currency is money transmission requiring a license under D.C. law. *See United States v. Harmon*, [474 F. Supp. 3d 76, 89](#) (D.D.C. 2020).

## **J. Florida**

A “money transmitter” under [Fla. Stat. §560.103\(23\)](#) “receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means”; a Florida appellate court found that this includes trade in digital currency. *State v. Espinoza*, [264 So. 3d 1055](#) (Fla. Dist. Ct. App. 2019). *See also* [Fla. Stat. §896.101\(f\)](#) (the Florida Money Laundering Act). Florida’s amnesty period to comply with the *Espinoza* decision ends Dec. 31, 2021. *See* “[Industry Alert: Amnesty Period for Virtual Currency Sellers](#)”. Several bills have been considered or are pending that would modify state law to address the *Espinoza* decision. The Florida Financial Technology Sandbox allows for the sandbox permission to substitute for a money transmitter license during the license period and relaxes a few other money transmitter requirements. [Fla. Stat. §559.952\(4\)\(a\)\(3\)](#) through (14).

## **K. Georgia**

Georgia’s money transmission laws define “money transmission” as receiving or transmitting “monetary value,” and “virtual currency” is specifically defined as “a digital representation of monetary value.” [O.C.G.A. §7-1-680\(13\)](#), (26). Therefore, a license is required under [O.C.G.A. §7-1-681](#), and Georgia regulators have the power to enact virtual currency-specific rules. [O.C.G.A. §7-1-690](#). *See also* Georgia Department of Banking and Finance, “[Money Transmission and the Sale of Payment Instruments](#)”; *cf.* “[Department of Banking and Finance Orders CampBX, Bitcoin Trading Platform, to Cease and Desist](#)” (July 26, 2018)

## **L. Guam**

Guam has not enacted regulations or legislation specifically regulating digital currency and while there is a crypto ATM in Guam, Coinbase does not allow accounts from this territory.

## **M. Hawaii**

[Haw. Rev. Stat. § 489D-4](#) defines money transmission with the broad “receiving money or monetary value for transmission,” but digital currency businesses are, through June 30, 2022, instead given permission through the Digital Currency Innovation Lab in order to determine what licensing is necessary. *See* “[DCIL FAQs](#)” (Aug. 26, 2021)

## **N. Idaho**

Idaho considers virtual currency exchanges to fall under the definition of money transmission requiring a license. *See* [Idaho Department of Finance](#) . The Department of Finance regularly issues no-action letters to businesses such as digital currency ATMs freeing them from licensing requirements. Redacted no-action letters can be found on the [Department of Finance’s](#) web site.

## **O. Illinois**

The definition of “money transmitter” in [205 ILCS 657/5](#) does not expressly mention digital assets; however, the Department of Financial and Professional Regulation released guidance as to when a digital currency business must register as a money transmitter. See [Digital Currency Regulatory Guidance](#) (June 13, 2017). The Division of Financial Institutions regularly issues “non-binding statements” to virtual currency businesses ruling on whether the businesses must be licensed. These statements can be found on the [Department of Finance’s](#) web site.

## **P. Indiana**

The definition of money transmission in [Ind. Code § 28-8-4-13](#) does not expressly mention virtual assets and may exclude virtual assets, including virtual currency, if sold for any purpose other than immediately facilitating a payment.

According to the Indiana [money transmitter licensing FAQ on NMLS](#), a virtual currency exchange does not generally require a money transmitter license.

## **Q. Iowa**

There is no exclusion for digital currency businesses from Iowa’s Uniform Money Services Act in [Iowa Code § 533C.103](#). Digital currency dealers such as Coinbase have obtained money services licenses from the Iowa Department of Banking.

## **R. Kansas**

[K.S.A. § 9-508\(h\)](#)’s definition of money transmission is broad enough to include digital currency.

However, under current administrative guidance a money transmitter license is not required when transmitting a decentralized digital currency; should the transmission of digital currency include the involvement of sovereign currency, a money transmitter license may be required. See Office of the State Bank Commissioner, “[Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act](#)” (May 18, 2021).

## **S. Kentucky**

[KRS 286.11-003](#) defines money transmission as “receiving money or monetary value to transmit ... money or monetary value to another location inside or outside the United States by any and all means” which does not expressly include or exclude digital currency. Digital currency dealers such as Coinbase have obtained money services licenses from the Department of Financial Institutions.

## **T. Louisiana**

The Louisiana Virtual Currency Businesses Act, [La. Rev. Stat. §§ 6:1381](#) to 6:1394, provides a licensing scheme for virtual currency businesses. There is a long list of exceptions to licensing in [La. Rev. Stat. § 6:1383\(B\)](#) and (C), including all virtual currency regulated by



Louisiana securities law and personal or academic use of virtual currency to buy goods and services.

Some exceptions may fall under the broad definition of money transmission under [La. Rev. Stat. § 6:1032\(13\)](#); Louisiana’s Office of Financial Institutions still maintains its [2014 guidance](#) stating that virtual currency exchangers require a money transmitter license.

#### **U. Maine**

As of Oct. 18, 2021, “virtual currency” is explicitly included in Maine’s definition of money transmission, [32 MRSA §6102\(10\)](#).

#### **V. Maryland**

As of October 1, 2021, the definition of “money transmission” in [Md. Code, Fin. Inst. § 12-401\(n\)\(1\)](#) includes “receiving ... other value that substitutes for currency” (“currency” having the definition under [31 C.F.R. § 1010.100\(m\)](#) as fiat currency) and transmitting it.

According to guidance on the [Maryland Office of the Commissioner of Financial Regulation website](#), “an administrator or exchanger that accepts and transmits a convertible virtual currency or buys or sells convertible virtual currency for any reason is a money transmitter under federal regulations.” The Office also states on [its regulated industries page](#) that its regulation of money transmission is “including transmission of virtual currency.”

Digital currency businesses such as Binance and Coinbase currently maintain Maryland money transmitter licenses.

#### **W. Massachusetts**

Massachusetts’s regulation of money transmission is only money transmission to foreign countries. See [209 CMR 45.02](#); Mass.gov, “Apply for a [Money Transmitter License](#).”

In a 2020 opinion letter, the Massachusetts Department of Banking found that transactions where fiat currency was exchanged for virtual currency between two parties across international borders, without more, was not money transmission requiring licensure. See [Division of Banks, Opinion 19-008](#) (Jan. 17, 2020). A digital wallet service was also found, on its facts, not to require a license. See [Division of Banks, Opinion 20-003](#) (May 22, 2020).

Selected Department of Banking opinion letters on virtual currency can be found [on the Department’s website](#).

#### **X. Michigan**

[MCL 487.1003\(c\)](#) defines “money transmission” as “selling or issuing payment instruments or stored value devices or receiving money or monetary value for transmission.” [Michigan’s Department of Insurance and Financial Services FAQs](#) states that holding funds in an “e-wallet” is money transmission requiring a license. [2019 guidance for consumers and industry](#)

states that if federal regulators would require an “administrator or exchanger” to get a money transmission license, one is required under Michigan law.

Virtual currency exchanges such as Binance and Coinbase maintain Michigan money transmission licenses.

#### **Y. Minnesota**

Money transmission under [Minn. Stat. § 53B.03](#) is defined as, “selling or issuing payment instruments or engaging in the business of receiving money for transmission or transmitting money.” Licenses are required for “businesses that cash checks, transmit money, own and operate ATMs, and provide electronic funds transfers,” according to the [Minnesota Commerce Department](#).

Some virtual currency exchanges such as Binance and Coinbase maintain Minnesota money transmission licenses.

#### **Z. Mississippi**

[Miss. Code § 75-15-3\(f\)](#) defines “monetary value” as “a medium of exchange, whether or not redeemable in money,” and [Miss. Code § 75-15-3\(g\)](#) defines “money transmission” to include receiving monetary value for transmission.

Some virtual currency exchanges such as Binance and Coinbase maintain Mississippi money transmission licenses.

#### **AA. Missouri**

Missouri’s “Sale of Checks” law defines a “check” as “any electronic means of transmitting or paying money.” [Mo. Rev. Stat. § 361.700\(2\)\(1\)](#).

Some virtual currency exchanges such as Binance maintain Missouri Sale of Checks licenses.

#### **BB. Montana**

Money transmitters do not need a license in Montana, according to the [Department of Banking and Financial Regulations](#). See also [Mont. Stat. § 30-10-105](#) (utility tokens exempted from state securities laws under certain circumstances).

#### **CC. Nebraska**

Nebraska’s money transmission law defines “monetary value” as “a medium of exchange, whether or not redeemable in money,” [Neb. Rev. Stat. § 8-2715](#), and therefore encompasses digital currency.

Effective Oct. 1, 2022, state-chartered “digital asset depository institutions” have the same exemption from money transmission registration as other banks. [Neb. Rev. Stat. § 8-2724](#). See also [Neb. Rev. Stat. § 8-3005](#) (framework for digital asset repository institutions).

Slot machines and other “mechanical amusement cash devices” may only accept fiat currency or vouchers for same; virtual currency is specifically prohibited. 316 NAC 54-102.05B(5).

#### **DD. Nevada**

The definition of “check” in [NRS § 671.010\(1\)](#) includes any “instrument used for the transmission or payment of money,” and a license is required for “selling or issuing checks” or “receiving for transmission or transmitting money or credits.” [NRS § 671.040\(1\)](#).

The Financial Institutions Division released a “[statement on regulation of cryptocurrency in Nevada](#)” stating that whether a business is a money transmitter is determined on a case-by-case basis; however, “any entity that facilitates the transmission of or holds fiat or digital currency by way of brick-and-mortar, kiosk, mobile, internet or any other means, should contact the NFID to request a licensure determination.”

Nevada also has a sandbox, the “[Regulatory Experimentation Program for Product Innovation](#)” [NRS §§ 657A.100](#) to [657A.620](#).

#### **EE. New Hampshire**

A business that solely deals in “convertible virtual currency” as defined by [RSA § 399-G:1\(VII\)](#) is exempt from money transmitter licensing, although still bound New Hampshire’s general unfair trade practices law and regulated by the state Department of Justice’s Consumer Protection Bureau. [RSA § 399-G:3\(VI\)\(a\)](#).

However, if a business deals in other forms of monetary value, [RSA § 399-G:1\(XV\)](#) expressly includes virtual currency so the business must be licensed under [RSA § 399-G:2](#); *see also* [New Hampshire’s banking department policy statement](#).

#### **FF. New Jersey**

The definition of “payment instrument” in [N.J.S.A. 17:15C-2](#) is broad enough to include virtual currency in New Jersey’s money transmission licensing scheme. Virtual currency exchanges Binance and Coinbase both maintain New Jersey money transmitter licenses.

#### **GG. New Mexico**

Although virtual currency is not explicitly mentioned in New Mexico’s money services business regulation, see [NMSA 1978 § 58-32-102](#), the New Mexico Regulation and Licensing Department considers dealing in virtual currency to require a license. *See* [Financial Institutions Division, Money Services Businesses](#); [FAQs](#).

#### **HH. New York**

New York’s Department of Financial Services has a special “BitLicense” for virtual currency businesses promulgated at [23 NYCRR §§ 200.1](#) to 200.22. Nearly any commercial transfer, sale, purchase, or issuance of virtual currency requires a license. [23 NYCRR 200.2\(q\)](#).

Businesses that engage in the transmission of fiat currency as well as virtual currency require both a BitLicense and a traditional money transmitter license as per [N.Y. Banking Law § 641](#) . See [BitLicense FAQs](#) .

See also the [Department of Financial Services’ page on virtual currency](#).

## **II. North Carolina**

North Carolina’s definition of money transmission requiring a license expressly includes virtual currency. [N.C.G.S. § 53-208.42\(13\)\(b\)](#), (15). However, an express agent of the payee is still exempt from licensure even if paid in virtual currency. [N.C.G.S. § 53-208.44\(8\)](#). See “[Money Transmitter Frequently Asked Questions](#).”

Money transmitter licensees who deal in virtual currency may have to obtain an increased surety bond. [N.C.G.S. § 53-208.47\(d\)](#). Investments in virtual currency by licensees may be verified at any time by the Commissioner of Banks. [N.C.G.S. § 53-208.48\(c\)](#).

## **JJ. Ohio**

[Ohio Rev. Code § 1315.01\(G\)](#)’s definition of “money transmission” encompasses nearly every transmission of monetary value. The [money transmission licensing application](#) provided by the Ohio Department of Commerce requires a dealer in virtual currency to provide a third-party audit of the licensee’s computer systems.

## **KK. Oklahoma**

The definition of “money transmitter” in [6 O.S. § 1512\(7\)](#) includes any transmission of funds across an electronic network. Many virtual currency exchanges maintain Oklahoma money transmission licenses.

## **LL. Oregon**

In the Oregon money transmitter laws, [ORS 717.200\(10\)\(b\)](#) defines “money” as a medium of exchange that “represents value that substitutes for currency.” Oregon licenses digital currency exchanges as money transmitters.

## **MM. Pennsylvania**

Although [7 P.S. § 6101](#) defines “money” as a “product that is generally recognized as a medium of exchange” and a “transmittal instrument” to include “electronic transfer,” the Pennsylvania Department of Banking and Securities [issued guidance](#) holding that only fiat currency is “money” and virtual currency trading platforms are exempt.

## **NN. Rhode Island**

Virtual currency transactions are expressly “currency transmission” under Rhode Island law. [G.L.1956 § 19-14-1\(4\)\(ii\)](#). Currency transmission requires a license, [G.L.1956 § 19-14-2\(3\)](#); however, there are a number of exceptions for specific situations in [G.L.1956 § 19-14.3-1](#). Rhode

Island has a list of mandated disclosures virtual currency businesses must make to their customers. [G.L.1956 § 19-14.3-3.5](#). A Rhode Island licensee must maintain enough virtual currency to satisfy all of its customers' entitlements. [G.L.1956 § 19-14.3-3.6](#).

*See also* [“Rhode Island Currency Transmission Law: Frequently Asked Questions”](#)

## **OO. South Carolina**

The South Carolina Attorney General's Money Services Division “views virtual currencies as lacking the characteristics necessary to be a medium of exchange” and therefore virtual currency businesses do not need to be licensed. *See* [“Money Services FAQs”](#); [interpretive letter of Dec. 5, 2018](#).

Virtual currency ATMs are specifically exempt as per an administrative order. [Order no. MSD-19003](#) (Sept. 6, 2109).

## **PP. South Dakota**

South Dakota considers the term “monetary value” in [SDCL 51A-17-1\(13\)](#) to include virtual currency. *See* Division of Banking, [“Virtual Currency Transmission in South Dakota”](#) (May 25, 2019).

## **QQ. Tennessee**

Tennessee does not consider cryptocurrency itself “money transmission,” but many acts of converting virtual currency into fiat currency fall under the definition of money transmission and must be licensed. Tennessee Department of Financial Institutions, [“Regulatory Treatment of Virtual Currencies Under the Tennessee Money Transmitter Act”](#) (Dec. 16, 2015).

## **RR. Texas**

The Texas Department of Banking finds that exchange or transfer of most virtual currencies, standing alone, is not money transmission requiring a license. However, trade in stablecoins, or use of a third-party exchanger (including virtual currency “ATMs”), must be licensed as money transmission. *See* [Supervisory Memorandum 1037](#), “Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act,” Apr. 1, 2019.

*See also* [TX BUS & COM § 9.1071](#), 12.001, 12.003, & 12.004 (virtual currency incorporated into state's Uniform Commercial Code).

## **SS. Utah**

“Blockchain tokens” are explicitly excluded from Utah's money transmitter definition. [Utah Code § 7-25-102\(9\)\(b\)](#).

## **TT. Virginia**

The Virginia Bureau of Financial Institutions holds that virtual currencies are not included in the definition of money transmission under [Va. Code § 6.2-1900](#) although transactions that also involve the transfer of fiat currency may be. “[Notice to Virginia Residents Regarding Virtual Currency](#)” (Aug. 25, 2021).

## **UU. Vermont**

[8 V.S.A. § 2500\(13\)](#) of the Vermont Money Services Act defines “virtual currency” as “a digital representation of value that (A) can be a medium of exchange, a unit of account, or a store of value; (B) has an equivalent value in money or acts as a substitute for money; (C) may be centralized or decentralized; and (D) can be exchanged for money or other convertible virtual currency.”

[8 V.S.A. § 2502](#) of the Vermont Money Services Act requires persons engaging in money transmission to obtain a money transmitter license or be an authorized delegate of a person with a money transmitter license. This section also requires persons engaging in currency exchange to obtain a currency exchange license, obtain a money transmitter license, or be an authorized delegate of a person with a money transmitter license.

[11 V.S.A. § 4173](#) states that a block-chain based limited liability company (“BLLC”) “may provide for its governance, in whole or in part, through blockchain technology,” and establishes certain requirements for BLLC operating agreements.

## **VV. Washington**

[RCW 19.230.010\(18\)](#) specifically states that virtual currency is included in the definition of money transmission. However, the implementing regulations say that storage of virtual currency without the unilateral power to transmit is not money transmission. [WAC 208-690-015\(4\)](#).

Virtual currency money transmitters must have a third party security audit of their computer systems. [RCW 19.230.040\(5\)](#); [WAC 208-690-030\(7\)](#). There are also virtual currency-specific investment and disclosure requirements; [RCW 19.230.200\(1\)](#), [RCW 19.230.370](#), [WAC 208-690-085\(4\)](#), [WAC 208-690-205\(3\)](#). There is a separate minimum net worth requirement for licensees that also store virtual currency. [WAC 208-690-060\(2\)](#).

*See also* Washington Department of Financial Institutions, “[Industry Guidance for Virtual Currency, Cryptocurrency, and Digital Assets](#).”

## **WW. West Virginia**

[W. Va. Code § 32A-2-1\(6\)](#) considers “currency transmission” and “money transmission” synonymous, and both include the transfer of “value that substitutes for money.”

However, a licensee under the West Virginia Fintech Regulatory Sandbox does not need to apply for a separate money transmitter license. [W. Va. Code § 31A-8G-4\(d\)](#), [\(e\)](#).

## **XX. Wisconsin**

The Wisconsin Department of Financial Institutions interprets its authority under [Wis. Stat. § 217.03](#) as not extending to the transmission of virtual currency, although dealers in virtual and fiat currency likely need a license for the latter. *See* “[Sellers of Checks](#).”

## **YY. Wyoming**

“Buying, selling, issuing, or taking custody of payment instruments in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States by any means” is exempt from licensing as money transmission under Wyoming law. [Wyo. Stat. § 40-22-104\(a\)\(vi\)](#).

Furthermore, the Wyoming Financial Technology Sandbox, [Wyo. Stat. §§ 40-29-101 through 40-29-109](#); and [021.0008.1 Wyo. Code R. §§ 1](#) to 8, explicitly applies to money transmission licensing. [Wyo. Stat. § 40-22-104\(b\)](#).

*See also* [Wyo. Stat. § 34-29-102](#) (digital assets incorporated into state’s Uniform Commercial Code); [Wyo. Stat. § 34-29-106](#) (utility tokens exempted from state securities laws under certain circumstances); [Wyo. Stat. §§ 13-12-101 through 13-12-126](#) (special purpose depository institutions).



**VIII. Appendix C: Matrix of Federal/State Regulation, International Guidelines**

<b>FEDERAL</b>	
<b>Regulator/Enforcer</b>	<b>Source of Authority</b>
Internal Revenue Service (IRS)	Internal Revenue Code and related regulations  <u>Note:</u> The Infrastructure Investment and Jobs Act § 80603 (Information Reporting for Brokers and Digital Assets) amended the Internal Revenue Code §§ 6045, 6045A, 6050, and 6724
Securities and Exchange Commission (SEC)	Federal securities laws (including Securities Act of 1933 and Securities and Exchange Act of 1934) and SEC regulations
Commodity Futures Trading Commission (CFTC)	Commodity regulations Exchange Act and CFTC
Financial (FinCEN)	Crimes Enforcement
Office of Foreign Asset Control (OFAC)	Internal Emergency Economic Powers Act, Trading with the Enemy Act, and OFAC regulations
Office of the Comptroller of the Currency (OCC)	National Bank Act, Home Owners' Loan Act, and OCC regulations
Consumer (CFPB)	Financial Protection
Department of Justice (DOJ)	Act to Establish the Department of Justice

<b>INTERNATIONAL</b>	
<b>Body</b>	<b>Governing Document</b>
Financial Stability Board (FSB)	Charter of the Financial Stability Board
Financial Action Task Force (FATF)	Financial Action Task Force Mandate
World Bank	IBRD Articles of Agreement, IFC Articles of Agreement, IDA Articles of Agreement, MIGA Convention, ICSID Convention
Bank of International Settlements (BIS)	Constituent Charter of the Bank for International Settlements

## **IX. Appendix D: Timeline of Digital Assets<sup>35</sup>**

### **A. 2022**

President Biden signed an [executive order](#) establishing six key priority areas for digital assets (consumer and investor protection, financial stability, illicit finance, U.S. leadership in the global financial system and economic competitiveness, financial inclusion, and responsible innovation) for further research and examination by federal regulatory agencies, along with prioritizing the study of a central bank digital currency (CBDC).

The Federal Reserve issues report, “Money and Payments: The U.S. Dollar in the Age of Digital Transformation.” The report discusses the uses, benefits, and risks of issuing a Central Bank Digital Currency (CBDC).

### **B. 2021**

SEC Chair Gensler makes advisory statements that cryptocurrency tokens are likely securities that need to be registered with the SEC (or meet an exemption), and that cryptocurrency trading platforms likely need to be registered with the SEC.

OCC issues Interpretive Letter #1179, which requires national banks to obtain supervisory non-objection(s) from the OCC when engaging in cryptocurrency activities. The letter also clarifies and reaffirms the OCC’s stance on former interpretive letters regarding cryptocurrency.

The Biden Administration issues a report on stablecoins calling for 1) stablecoin issuers to be regulated like banks, 2) stablecoin wallets to be regulated like banks, and 3) stablecoins to be kept separate from commercial activity. Input on the report was provided by the U.S. Treasury, the Board of Governors of the Federal Reserve System, SEC, CFTC, FDIC, and the OCC.

The international Financial Action Task Force (FATF), issues updates to its guidance on Virtual Asset Service Providers.

The U.S. Justice Department announces a national cryptocurrency enforcement team.

### **C. 2020**

The OCC announces that federally chartered banks may provide custody service for crypto assets. The CFTC issues final guidance interpreting “actual delivery” and asserting jurisdiction over digital assets, making Bitcoin a commodity.

### **D. 2019**

Wyoming creates a Wyoming-state chartered bank that can accept deposits and conduct digital asset activity along with a digital asset law. SEC, CFTC, and FinCEN issue a joint statement on digital assets; the SEC and FINRA publish a joint statement on the custody of digital asset

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<sup>35</sup> For a more complete timeline of banking, see <https://dfi.wa.gov/fintech/timeline> and <https://www.okhistory.org/historycenter/federalreserve/edutimeline.html>.

securities; and the SEC and the CFTC issue a joint alert regarding fraudulent digital asset trading websites. The SEC FinHub publishes a “framework” to evaluate whether a digital asset is considered a security under the investment contract test.

IRS updates guidance on tax treatment and reminds taxpayers of reporting obligations.

**E. 2018**

The SEC and CFTC aggressively engage, releasing statements, guidance and opinions on digital asset securities issuances and trading, on digital tokens, on virtual currency derivatives, on unlawful digital asset trading platforms, on “pump-and-dump” schemes and expressing concern about distributed ledger technology (DLT). The SEC launches FinHub. The OCC accepts national bank charter applications from fintech companies.

**F. 2017**

The SEC concludes its investigation of “a decentralized autonomous organization” (the “DAO Report”) and also issues an Investor Bulletin on Initial Coin Offerings (ICOs) and celebrity backed ICOs.

**G. 2015**

CFTC defines cryptocurrencies as commodities and The New York Department of Financial Services (NYDFS) begins to regulate cryptocurrencies and exchanges using “BitLicense”.

**H. 2014**

The IRS publishes regulations declaring virtual currency taxable assets.

**I. 2013**

First Bitcoin ATM opens in Vancouver, Canada. Plaid is launched. FinCEN issues guidance for administering, exchanging, or using virtual currencies.

**J. 2012**

Coinbase launches.

**K. 2011**

FinCEN implements a rule clarifying which entities are considered money services businesses and therefore must comply with the Bank Secrecy Act.

**L. 2009**

Bitcoin blockchain launches. Venmo launches.